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U.S. Customs Service

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and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181, and 191

(T.D. 94-1)

RIN 1515-AB33

NORTH AMERICAN FREE TRADE AGREEMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Area Agreement entered into by the United States, Canada and Mexico.

DATES: Interim rule effective January 1, 1994; comments must be received on or before March 30, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

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SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 13, 1992, the United States, Canada and Mexico (the "Parties") entered into an agreement, the North American Free Trade

Agreement (NAFTA). The stated objectives of the NAFTA are to: eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; increase substantially investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; create effective procedures for the implementation and application of the NAFTA, for its joint administration and for the resolution of disputes; and establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of the NAFTA.

The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act (the "Act"), Pub. L. 103–182, 107 Stat. 2057.

The principal role of the U.S. Customs Service is to administer the provisions of the NAFTA and the Act which relate to the importation of goods into the United States from Canada and Mexico. Those Customs-related NAFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin) and Chapter Five (Customs Procedures).

The tariff-related provisions within NAFTA Chapter Three which require regulatory action by Customs are Article 303 (Restriction on Drawback and Duty Deferral Programs), Article 305 (Temporary Admission of Goods), Article 306 (Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials) and Article 307 (Goods Re-Entered after Repair or Alteration). The non-tariff provisions of Chapter Three requiring Customs regulatory action are Article 310 (Customs User Fees), Article 311 (Country of Origin Marking) and Annex 300–B (Textile and Apparel Goods).

Chapter Four of the NAFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States, Canada or Mexico (NAFTA country) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 302(2) and Annex 302.2 of the NAFTA. Under Article 401 within that Chapter, originating goods may be grouped in two broad categories: (1) goods which are wholly obtained or produced entirely in one or more NAFTA countries; and (2) goods which are produced entirely in one or more NAFTA countries exclusively from materials that originate in those countries, or goods which are produced entirely in those countries and which satisfy the specific rules of origin in NAFTA Annex 401 (change in tariff classification requirement and/ or regional value-content requirement). Article 402 sets forth the methods for calculating the regional value content of a good and the rules for determining the value of materials used in the production of a good. Article 403 sets forth special rules for calculating the regional value con-

tent in the case of automotive goods. Article 404 provides for accumulation of production by two or more producers. Article 405 provides a de minimis criterion. The remaining Articles within Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations. The basic rules of origin in Chapter Four of the NAFTA, as well as the specific rules of origin in Annex 401 of the NAFTA, are set forth in General Note 12, Harmonized Tariff Schedule of the United States (HTSUS).

Chapter Five sets forth the procedural and other customs requirements which apply under the NAFTA, in particular with regard to claims for preferential tariff treatment. Articles 501–506 of this Chapter provide for use of a Certificate of Origin for purposes of certifying that an exported good qualifies as an originating good under the Chapter Four origin rules, set forth the rights and obligations of importers regarding imported goods and of exporters and producers regarding exported goods, and set forth the rights and obligations of the customs administration of the importing country when conducting a verification of the origin of a good and when denying a claim for preferential tariff treatment. Article 507 sets forth confidentiality principles regarding business information collected pursuant to Chapter Five. Article 508 requires each Party to maintain penalties for violations of its laws and regulations relating to Chapter Five. Article 509 sets forth rules for the issuance and application of advance rulings by the customs administration of the importing country regarding whether a good meets the country of origin marking requirements of Article 311 or the origin rules of Chapter Four or other NAFTA requirements that apply to certain goods at the time of importation. Article 510 extends to exporters and producers of goods substantially the same rights of review and appeal accorded to importers regarding advance rulings or marking determinations of origin or country of origin determinations for purposes of preferential tariff treatment. Article 511 requires the Parties to establish, and implement through their respective laws or regulations, Uniform Regulations regarding the interpretation, application and administration of Chapter Four, Chapter Five and any other matter as agreed by the Parties. Finally, Articles 512 and 513 set forth procedures for cooperation between the Parties regarding the implementation and administration of the customs-related aspects of the NAFTA.

Pursuant to Article 511 of the NAFTA, representatives of the Parties engaged in a series of trilateral discussions for the purpose of formulating uniform regulatory texts or principles in respect of Chapters Four and Five and in respect of certain provisions within Chapter Three. As regards Chapter Three, agreement was reached on certain principles to be applied for purposes of implementing the drawback provisions of Article 303. With regard to the remaining Chapter Three provisions, including the country of origin marking provisions of Article 311 and its companion Annex 311 (which provide for the establishment of "Mark-

ing Rules" for purposes of determining whether a good constitutes, and thus may be marked as, a good of a Party and which set forth disciplines on the methods and procedures for the country of origin marking of goods), those provisions are to be implemented by each Party independently and as appropriate within each Party's statutory and regulatory structure. As concerns Chapter Four, the Parties agreed to implement substantively verbatim texts of interim regulations covering all of the provisions of that Chapter. Finally, in recognition of the different existing customs legal and procedural requirements in the three countries, in the case of Chapter Five the Parties agreed to use a standards approach whereby agreement was reached on certain minimum principles to be reflected in each Party's regulations, with each Party being left free to implement those principles, and any other requirements not inconsistent therewith, in accordance with the needs of the Party's particular statutory and regulatory framework.

In order to provide transparency and facilitate their use, the majority of the NAFTA implementing regulations set forth in this document have been included within one new Part 181. However, in those cases in which NAFTA implementation is more appropriate in the context of an existing regulatory provision, the NAFTA regulatory text has been incorporated in an existing Part within the Customs Regulations. In addition, this document sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new NAFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

Discussion of Amendments

Part 10:

Section 10.8 is amended by adding a new paragraph (a) to reflect the inclusion of provisions implementing NAFTA Article 307 (goods reentered after repair or alteration) in new Part 181 and by redesignating former paragraphs (a)–(1) as (b)–(m). Consequential amendments are also made to §§ 10.36a, 10.66 and 10.67.

Section 10.31(f) is amended by adding a sentence at the end to reflect the provision in NAFTA Article 305(2)(d) that, as regards the goods described in the added sentence, no bond or other security shall be required in the case of goods originating in Canada or Mexico. The other provisions of NAFTA Article 305 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the Customs Regulations and in Chapter 98 of the HTSUS.

Part 12:

Part 12 is amended by adding a new § 12.132 to clarify the relationship between present § 12.130(f) (which requires submission of a country of origin declaration for textiles and textile products) and Annex 300–B of the NAFTA (textile and apparel goods).

Part 24:

Section 24.22, which was published as a final rule in T.D. 93-85 on October 21, 1993 (58 FR 54271), is amended to reflect changes to section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) effected by section 521 of the Act. The changes involve, for fiscal years 1994 through 1997 (in effect, from January 1, 1994 through September 30, 1997), (1) an increase in the commercial passenger arrival fee from $5 to $6.50 and (2) suspension of the exemption from the commercial passenger arrival fee in the case of persons whose journey involves certain specified locations outside the United States.

Section 24.23(c)(3) is revised (1) to remove the references to the staged reduction of user fees for processing merchandise in the case of goods originating in Canada as provided for in the United States-Canada Free Trade Agreement (CFTA) since the final staged reduction (to zero) takes effect on January 1, 1994, and (2) to reflect the user fee provisions of Article 310 and Annex 310.1 of the NAFTA as regards goods originating in Canada. The revised text makes no specific reference to goods originating in Mexico because, under Annex 310.1 of the NAFTA, existing U.S. merchandise processing fees will continue to apply, even in the case of originating goods which qualify to be marked as goods of Mexico pursuant to NAFTA Annex 311, until June 30, 1999. The last sentence of revised § 24.23(c)(3) is intended to clarify the application of the fees for processing merchandise in cases where goods originating in Canada are entered with goods that are not so originating: the fees will be applied only to the nonoriginating goods.

It should be noted that, as a result of the conclusion of the CFTA staged reductions and the revision of § 24.23(c)(3) as set forth in this document, with effect from January 1, 1994, Customs will no longer require use of a formula for purposes of applying the staged reductions to the surcharge and specific fees of § 24.23 where a shipment covers both originating and nonoriginating goods. As in the case of the ad valorem fee under § 24.23, the surcharge and specific fees will be applied in their entirety but only to the nonoriginating portion of the shipment.

Part 123:

A sentence is added at the end of § 123.0 (scope) to refer to the new Part 181 NAFTA regulations regarding the treatment of goods from Canada or Mexico.

Part 134:

Eight sections within Part 134 are amended to reflect the provisions of NAFTA Article 311 and Annex 311, as implemented by section 207 of the Act, and two other sections in Part 134 are amended for cross-reference or editorial purposes. NAFTA Annex 311: (1) provides for the promulgation of Marking Rules used for determining whether a good is a good of a NAFTA country (the Marking Rules are not set forth or otherwise substantively dealt with in this document); and (2) sets forth general marking principles pertaining to the methods and procedures

relating to the country of origin marking of such goods. The specific amendments are described below.

Section 134.0 (scope) is amended by adding a sentence to refer to Subpart J of new Part 181 which sets forth the review and appeal rights of exporters and producers regarding adverse marking decisions provided under NAFTA Article 510, as implemented by section 207 of the Act.

In § 134.1, two definitions ("Country of origin" and "Ultimate purchaser") are amended by adding text to reflect provisions of NAFTA Annex 311, and four definitions ("Good of a NAFTA country," "NAFTA," "NAFTA country," and "NAFTA Marking Rules") are added to clarify NAFTA references. Four other paragraphs are amended by adding text that implements NAFTA provisions.

Sections 134.22, 134.23, and 134.24 are generally amended by adding references and text concerning general marking provisions applicable to usual containers which are goods of NAFTA countries. In § 134.22, a new paragraph (d) is added to define when a good of a NAFTA country constitutes a "usual container" and to specify that such a good is not required to be marked with its country of origin, and former paragraph (d) is redesignated paragraph (e) and amended by adding text to refer to additional circumstances (set forth in § 134.32) in which the containers of excepted NAFTA goods are not required to be marked.

In § 134.32, paragraph (h) is amended by adding a "reasonable knowledge" standard in the case of NAFTA goods, and two new NAFTA marking exceptions are added relating to (1) original works of art (paragraph p) and (2) goods classifiable under HTSUS subheading 6904.10 or HTSUS heading 8541 or 8542 (paragraph q).

Section 134.35 is amended by adding a new paragraph (b) to indicate that the NAFTA Marking Rules will be used to determine when a good of a NAFTA country which is to be further processed in the United States is excepted from country of origin marking requirements.

Section 134.43 is amended to except NAFTA goods from some special marking requirements (pertaining to Native American-style jewelry and arts and crafts) and to allow for any reasonable method of marking the goods of another NAFTA country.

Section 134.45(a) is amended by adding a new paragraph (2) which permits a good of a NAFTA country to be marked with the name of the country of origin in English, French, or Spanish; however, any other required information is required to be printed in English.

Finally, in § 134.44(a), an editorial change is made which relates to acceptable methods of marking certain goods.

Part 162:

Section 162.0 (scope) is amended by the addition of a cross-reference to new Part 181 regarding additional records maintenance and examination provisions applicable to U.S. importers, exporters and producers.

Part 174:

A cross-reference sentence has been added at the end of § 174.0 (scope) to draw the reader's attention to the inclusion in the new NAFTA regulations of provisions regarding administrative review and appeal of adverse marking decisions (see the discussion of Subpart J of new Part 181 below).

Section 174.12, which concerns who may file a protest, is amended by the addition of a new paragraph (a)(5) to give effect to Article 510 of the NAFTA, as implemented by section 208 of the Act through an amendment to the protest provisions of 19 U.S.C. 1514, regarding the right of an exporter or producer, who completed and signed a Certificate of Origin for an originating good, to obtain administrative review of a determination of origin pertaining to that good.

Section 174.15, regarding consolidation of protests, is amended by designating the former text as paragraph (a) and adding new text as paragraph (b) to reflect the fact that, under the NAFTA as implemented by the Act, persons who are not directly involved in a U.S. import transaction (that is, Canadian and Mexican exporters and producers) have protest rights as do U.S. importers as regards NAFTA origin determinations. In recognition of the fact that exporters, producers and importers may have different financial interests and business confidentiality concerns, paragraph (b) is intended to strike a balance between the participatory principle of Article 510 of the NAFTA and the business confidentiality principle contained in Article 507 of the NAFTA (see Subpart K of new Part 181).

Section 174.29 is amended by the addition of a sentence to provide that, if a protest by an exporter or producer is allowed in whole or in part and excess monies are found to have been collected on the import transaction, a refund will be payable to the party (in most cases, the importer of record) who paid the monies even if such party did not file an appropriate and timely protest.

Part 177:

Exception language, regarding NAFTA advance rulings which are covered by new Part 181, is added to § 177.0 (scope) and in the first sentence of § 177.1(c). See the discussion of Subpart I of Part 181 below as regards the relationship between NAFTA advance rulings and rulings under Part 177.

Part 178:

The list contained in § 178.2 is amended to conform to the redesignation of § 10.8(e) as § 10.8(f) reflected in the Part 10 changes discussed above.

Part 181:

Section 181.0:

Section 181.0 outlines the scope of new Part 181 and includes cross-references to other parts of the regulations where certain NAFTA im-

plementing regulations have been included as set forth in this document. This section also clarifies that, except where the context otherwise requires, the requirements contained in Part 181 are in addition to general administrative and enforcement provisions set forth elsewhere in the Customs Regulations. Thus, for example, the specific merchandise entry requirements contained in Part 181 are in addition to the basic entry requirements contained in Parts 141–143 of the regulations.

SUBPART A—GENERAL PROVISIONS

Section 181.1 sets forth definitions of common terms used in multiple contexts or places within Part 181. Although the majority of the definitions in this section are based on definitions contained in Articles 201, 318 and 514 of the NAFTA or in section 2 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited Part 181 context are set forth elsewhere with the substantive provisions to which they relate.

SUBPART B—EXPORT REQUIREMENTS

Section 181.11 implements NAFTA Articles 501(1) and (3) and 504(1) which concern use of a Certificate of Origin for purposes of certifying that an exported good is an originating good and thus entitled to preferential tariff treatment under the NAFTA. This section also implements NAFTA Article 504(1)(b) which requires an exporter or producer to promptly provide written notification of errors in a Certificate to any person to whom the Certificate was given.

Section 181.12(a) concerns the maintenance of records by a U.S. exporter or producer who executes a Certificate of Origin, as required by NAFTA Article 505(a) and by 19 U.S.C. 1508(b) as amended by section 205(a) of the Act. Section 181.12(b) concerns the availability of those records both to U.S. Customs and to the Canadian or Mexican customs administration (in the latter case for purposes of an origin verification under NAFTA Article 506—see the discussion of Subpart G below).

Section 181.13 concerns measures applied for a failure of a U.S. exporter or producer to comply with a requirement of Part 181 and is based on NAFTA Article 504(2)(b).

SUBPART C—IMPORT REQUIREMENTS

Section 181.21 sets forth the procedure for claiming NAFTA tariff benefits at the time of importation and, as provided in NAFTA Articles 502(1)(a) and (d), requires a U.S. importer to file a declaration, and to correct a declaration that contains incorrect information, in connection with the claim. Section 181.21 also implements NAFTA Article 502(1)(b) by requiring that the declaration that the goods are NAFTA originating goods be based on a Certificate of Origin which is in the possession of the importer.

Section 181.22 implements NAFTA Articles 501(2) and (5), 502(1)(c), 503 and 505(b) which concern the obligations of an importer regarding

the submission of a Certificate of Origin to Customs and the maintenance of the Certificate and other relevant records regarding the imported good. Included in § 181.22 is a provision that a Certificate of Origin may be used either for a single importation or for multiple importations of identical goods.

Section 181.23, which is based on NAFTA Article 502(2)(a), authorizes the denial of NAFTA tariff benefits if the importer fails to comply with the requirements of Part 181.

SUBPART D – POST-IMPORTATION DUTY REFUND CLAIMS

Sections 181.31 through 181.33 implement NAFTA Article 502(3) and section 206 of the Act, which allow an importer, who did not claim NAFTA tariff benefits on a qualifying good at the time of importation, to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

SUBPART E – RESTRICTIONS ON DRAWBACK AND DUTY DEFERRAL PROGRAMS

This subpart sets forth the specific rules and procedures under NAFTA Article 303, as implemented by section 203 of the Act, regarding restrictions on drawback and duty-deferral programs (NAFTA drawback). The procedures apply to goods imported into the United States and then subsequently exported to Canada on or after January 1, 1996, or to Mexico, on or after January 1, 2001, with a claim for preferential tariff treatment pursuant to the NAFTA. The provisions of the NAFTA and the Act implemented by this subpart operate principally to limit the amount of drawback, waiver or reduction of duties so as to avoid double duty-free or reduced-duty treatment on goods or materials that originally came from a non-NAFTA country (that is, on both the good or material when imported into the United States from a non-NAFTA country and on that good or material, or other good or material incorporating that good or material, when exported to Canada or Mexico under the NAFTA).

Section 181.41 clarifies the applicability of the subpart. It sets forth the effective date of the regulatory provisions and states that the provisions of the subpart are in addition to the general requirements and procedures contained in Parts 10, 19, 144, 146 and 191 of the Customs Regulations.

Section 181.42 specifies the duties and fees that are not subject to drawback under this subpart.

Section 181.43 outlines the general circumstances under which goods are eligible for drawback under the subpart.

Section 181.44 sets forth the limitation on the payment of drawback as provided for in NAFTA Article 303: upon presentation of a drawback claim, drawback of duties previously paid upon importation of a good into the United States may be granted on the lower amount of (1) the total duties paid or owed on the good in the United States, or (2) the total

amount of duties paid on the exported good upon subsequent importation into Canada or Mexico. The section also sets forth the operation of this rule with regard to specific types of drawback provided for in 19 U.S.C. 1313.

Section 181.45 outlines the circumstances in which full drawback may be granted without regard to the limitation on drawback set forth in § 181.44.

Section 181.46 specifies the time and place for filing a drawback claim under the subpart.

Section 181.47 sets forth the requirements for proper completion of a drawback claim including, for each type of drawback, the documentary materials (including proof of exportation and evidence of payment of duties in Canada or Mexico) that must be submitted with the claim.

Section 181.48 identifies the persons entitled to receive drawback.

Section 181.49 provides that, with respect to manufacturing drawback claims, the persons required to keep records under this subpart or under § 191.5 shall retain such records for at least three years after the payment of the drawback claim.

Section 181.50 sets forth the procedures for payment and liquidation of drawback claims and provides that (1) liquidation of the drawback claim becomes final only when liquidation of the U.S. import entry has become final and, except for goods entitled to full drawback under § 181.45, when liquidation of the Canadian or Mexican entry has become final and (2) if accelerated drawback procedures are used, the person who received the accelerated drawback payment must make repayment if the claim is adversely affected by subsequent administrative or court action.

Section 181.51 requires a certification from the person entitled to receive drawback to ensure that there is no double payment of a drawback claim.

Section 181.52 provides for reliquidation of a drawback claim, and refund to Customs of any amount of drawback paid in excess of that allowed under § 181.44, if, after drawback has been granted under this subpart, the Canadian or Mexican customs administration refunds duties pursuant to NAFTA Article 502(3) (post-importation duty refund claims) or under any other circumstance.

Section 181.53 implements the NAFTA Article 303 provisions as regards duty-deferral programs. Accordingly, this section (1) provides for the collection of duty on a good imported into the United States pursuant to a duty-deferral program (any measure which postpones duty payment, such as bonded warehouse, foreign trade zone, and temporary importation bond provisions) when the good is withdrawn from the duty-deferral program and exported to Canada or Mexico, and (2) provides for the waiver or reduction of such duties in an amount that does not exceed the lesser of either the total duty required to be paid under this section or the total amount of customs duties subsequently paid to Canada or Mexico (provided that proof of exportation and of the pay-

ment of duties in Canada or Mexico is submitted within 60 days after the date of exportation). The section also sets forth recordkeeping requirements and provides for reliquidation of a claim granted under the section, and consequent refund of any amount waived or reduced in excess of that allowed under the section if the Canadian or Mexican customs administration grants a subsequent claim for NAFTA preferential tariff treatment.

Section 181.54 provides that allowance of a claim submitted under this subpart shall be subject to such verification as the district director may deem necessary.

SUBPART F—COMMERCIAL SAMPLES, PRINTED ADVERTISING MATERIALS, AND GOODS RETURNED AFTER REPAIR OR ALTERATION

Section 181.61 outlines the applicability of the subpart.

Section 181.62 implements the provisions of NAFTA Article 306 concerning duty-free entry of commercial samples of negligible value. Paragraph (c) of the section includes specific standards for the mutilation of textile samples valued over US$1 and is based on the standards which Customs has administratively applied for purposes of the U.S. textile import program and for purposes of classification in subheading 9811.00.60 of the HTSUS.

Section 181.63 implements NAFTA Article 306 as regards printed advertising materials.

Section 181.64 implements NAFTA Article 307 and Annex 307.1 regarding duty treatment on goods re-entered after repair or alteration in Canada or Mexico. The documentary requirements in paragraph (c) are based on simplified documentation proposals for section 10.8 of the Customs Regulations which were published in the Federal Register on January 15, 1993 (58 FR 4615).

SUBPART G—ORIGIN VERIFICATIONS AND DETERMINATIONS

Sections 181.71 through 181.76 implement the provisions of NAFTA Article 506 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to NAFTA preferential duty treatment and the issuance and application of origin determinations resulting from such verifications. This subpart also governs the conduct of verifications directed to producers of materials that are used in the production of a good for which NAFTA preferential duty treatment is claimed.

Section 181.71 provides that where a timely claim for NAFTA tariff treatment is made based on an acceptable Certificate of Origin, any denial of preferential tariff treatment must be made on the basis of an origin verification conducted under this subpart.

Section 181.72 implements the provisions of NAFTA Article 506(1)(c) by providing that, in addition to verification visits and questionnaires which are specifically authorized by Articles 506(1)(a) and (b), verifications may be also be conducted by letter. In addition, this section provides that any other verification method may be used that results in

information from a Canadian or Mexican exporter or producer and that any such information must be in writing and signed by the exporter or producer if it is to be used as the basis for an adverse origin decision.

Section 181.72 also specifies the procedures under which verification letters and questionnaires are to be transmitted. It further provides that, in the case of a failure to respond to an initial verification letter, a follow-up letter will be sent (for purposes of renewing the request for information) which may also provide notice that, in the event of a non-response, preferential tariff treatment will be denied. The follow up letter must be sent by certified or registered mail or by such other method that produces a confirmation of receipt if a request for such procedure has been made by the customs administration of the Party from which the good was exported.

Section 181.73 implements NAFTA Articles 506(2) and (3) by setting forth the procedures for notification of a verification visit.

Section 181.74 sets forth procedures for the conduct of a verification visit. Included in those procedures is the right of the person visited to have observers present during the verification.

Section 181.75 implements NAFTA Article 506(9) by providing for the issuance of a written determination of origin based on an analysis of the results of the origin verification. This section also prescribes the information required to be included in the written determination and includes special content and issuance requirements in the case of a negative origin determination, including a statement of the right of the exporter or producer to submit a response to the determination within a specified period of time before the determination will take effect.

Section 181.76 sets forth the provisions governing the effective date of a determination of origin issued under § 181.75. In the case of a negative origin determination, the effective date depends on the method by which the origin determination is sent.

Section 181.76 also implements NAFTA Articles 506(10), (11) and (12) by setting forth special effective date rules where a negative origin determination by Customs is based on the tariff classification or value of materials used in the production of the good which differs from that which was applied to the materials by Canada or Mexico. Such a determination will only become effective when notification is given to the importer and to the exporter or producer who signed the Certificate of Origin pertaining to the good for which preferential tariff treatment was sought. Where that classification or value was the subject of a ruling by, or consistent treatment accorded by, the Canadian or Mexican customs administration, Customs will not apply its determination to importations made prior to the determination if advised of this difference within the period allowed for submitting a response to the determination. In addition, pursuant to section 181.76(e) the effective date of the determination is to be further postponed for a period of up to 90 days if the importer or the exporter or producer demonstrates to the satisfac-

tion of Customs that it relied in good faith to its detriment on the ruling or consistent treatment applied by Canada or Mexico.

SUBPART H—PENALTIES

Section 181.81(a) concerns the general application of penalties to NAFTA transactions and is based on NAFTA Article 508(1). Section 181.81(b) concerns a false certification by an exporter or producer and is based on NAFTA Article 504(2)(a) as implemented by section 205(b) of the Act.

Section 181.82(a) reflects NAFTA Articles 502(2)(b) and 504(3), as implemented by section 205(b) of the Act, with regard to exceptions to the application of penalties (1) in the case of an importer who makes a corrected declaration (as required under NAFTA Article 502(1)(d)—see § 181.21(b)) if the correction is done voluntarily and (2) in the case of an exporter or producer who provides notice of an incorrect Certificate of Origin (as required under NAFTA Article 504(1)(b)—see § 181.11(d)) if the notice is provided voluntarily. Section 181.82(b), which sets forth standards for determining whether the correction or notice is effected "voluntarily", is based on the standards applied for prior disclosures under 19 U.S.C. 1592 as set forth in § 162.74 of the Customs Regulations.

SUBPART I—ADVANCE RULING PROCEDURES

This subpart implements the advance ruling provisions of NAFTA Article 509 and the review provisions regarding advance rulings of NAFTA Article 510. Section 181.91 sets forth the rules regarding the applicability of the subpart and provides, in particular, that U.S. importers and Canadian and Mexican exporters and producers must use the provisions of this subpart (and thus may not use the provisions of Part 177) when seeking a ruling on a subject matter specified in § 181.92(b)(6) (that is, any subject matter specified in or authorized under Article 509(1)). The remaining sections of this subpart generally follow the provisions of Part 177, except where variances are required to conform to the NAFTA and to the standards agreed by the three countries during the trilateral discussions mentioned above. The principal provisions of these sections, including the differences with Part 177, are indicated below.

In addition to the issuance of rulings to exporters and producers of goods which are imported into the United States, § 181.92(b)(5) also authorizes the issuance of certain advance rulings to Canadian or Mexican producers of materials which themselves are not imported into the United States but are incorporated into goods which are imported into the United States.

Section 181.92(b)(6) implements NAFTA Article 509(1) by enumerating the issues which may be the subject of a NAFTA advance ruling.

Section 181.93 governs the content and submission of requests for advance rulings to Customs. Rulings covering certain subject matters may be submitted only to the Office of Regulations and Rulings at Customs

Headquarters. Other matters may be presented either to Customs Headquarters or to the Area Director of Customs, New York Seaport. The information which must accompany the request depends on the subject matter of the ruling request.

Section 181.94 provides that where a ruling request does not comply with the provisions of the subpart, the requester shall be so notified and shall be given a specified period of time (at least 30 calendar days) to bring the request into compliance. If such information is not provided within that period, Customs will close the matter and advise the applicant of that fact.

Sections 181.95, 181.96 and 181.97 cover oral discussion of issues, changes in the status of the transaction and withdrawal of ruling requests. These sections mirror the corresponding provisions of Part 177 with respect to these matters.

Section 181.98 provides that Customs may decline to issue a ruling when the matter which is the subject of the ruling involves an issue that is administratively pending with Customs or is the subject of a judicial proceeding.

Section 181.99 implements NAFTA Article 509, and reflects a standard agreed by the three countries, by providing that Customs will issue a ruling under this subpart within 120 days of receipt of all necessary information.

Subpart J—Review and Appeal of Adverse Marking Decisions

This subpart implements Article 510 of the NAFTA and section 207 of the Act regarding the review and appeal of NAFTA marking determinations. Specifically, it sets forth the circumstances and procedures under which NAFTA exporters and producers of merchandise may obtain information about, and administrative and judicial review of, an adverse marking decision.

Section 181.111 sets forth the applicability of Subpart J as described above.

Section 181.112 defines the terms "adverse marking decision", "exporter" of merchandise and "producer" of merchandise for purposes of the subpart. An adverse marking decision means a decision made by the district director which an exporter or producer of merchandise believes to be contrary to the provisions of NAFTA Annex 311 and which may be protested by the importer. In order to be considered an exporter of merchandise under the subpart, such person must be located in Canada or Mexico and must maintain certain records relating to the adverse marking decision. A producer of merchandise is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles such merchandise in Canada or Mexico.

Section 181.113 sets forth a procedure for exporters and producers to request from Customs a written statement regarding the basis of an adverse marking decision.

Section 181.114 sets forth a 30-day period for Customs to respond to a request under § 181.113 and specifies what information Customs shall provide to the exporters and producers.

Section 181.115 sets forth the circumstances in which an exporter or producer can intervene in an importer's protest regarding an adverse marking decision and the procedures for doing so.

Section 181.116 sets forth the circumstances and procedures under which an exporter or producer can file with Customs a petition for reconsideration of an adverse marking decision. It also sets forth the petitioner's right to commence a civil action in the Court of International Trade to contest the denial of a petition.

Subpart K—Confidentiality of Business Information

Section 181.121 reflects the principle of maintenance of confidentiality of business information set forth in NAFTA Article 507(1).

Section 181.122 reflects the NAFTA Article 507(2) exception to nondisclosure in the case of disclosures to governmental authorities for administrative and enforcement purposes.

Subpart L—Rules of Origin

Section 181.131 provides that the implementing regulations regarding the rules of origin provisions of HTSUS General Note 12 and NAFTA Chapter Four are contained in the Appendix to Part 181.

Appendix—Rules of Origin Regulations

The Rules of Origin Regulations are set forth as an Appendix to Part 181. The text is as trilaterally negotiated, except for editorial modifications, necessary and appropriate for the U.S. regulatory context.

The Appendix consists of a Title (Section 1), Parts I to VI, and Schedules I to XII. Sections 2 through 17 of Parts I through VI constitute the basic provisions for the interpretation and the application of the rules of origin of Chapter Four of the Agreement. Schedules I through XII constitute specific provisions that are necessary supplements to the basic provisions in Parts I through VI.

The first-level subdivisions of the Parts and Schedules are referred to as "sections" and are identified by Arabic numerals without parentheses. Each section is, for the most part, subdivided into "subsections" which are identified by Arabic numerals enclosed within parentheses. As necessary, a subsection may be further subdivided into "paragraphs," identified by a lowercase alphabetical symbol enclosed within parentheses; a paragraph may be subdivided into "subparagraphs," identified by a lowercase Roman numeral enclosed within parentheses paragraphs; and each subparagraph may be subdivided into "clauses," identified by uppercase alphabetical symbols enclosed within parentheses.

Parts I to VI and Schedules I to XII are both subdivided into sections. However, the numbering of the sections are sequential from Part I through Part VI, from one to seventeen whereas the numbering of the

sections in the schedules are sequential within each schedule. When Sections 2 through 17 are cited in the Schedules, they are cited as "section 'x' of this Appendix." When the sections of a schedule are cited in Parts I to VI or in other schedules, they are cited as "section 'x' of Schedule 'y'."

For purposes of citing to provisions of the Appendix, the citation takes its designation from the first subdivision in the citation. For example, a reference to subsection (4) of section 7 will read "section 7(4)." Any reference to a subsection (or any other subdivision of a section) without a corresponding reference to the section is taken to refer to a subsection (or other subdivision) within the section that the citation is made. This is done to reduce the number of text changes in the Appendix from the trilateral document.

Definitions

Section 2 sets forth terms that are defined for purposes of the Appendix. Section 8 sets forth additional terms that are defined specifically for application of the rules of origin to automotive goods. Section 3 sets forth the methodology for currency conversion if necessary to determine the value of goods or materials.

General Rules of Origin

Section 4 sets forth the basic rules of origin established in Chapter Four of the Agreement. The provisions of section 4 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under this Appendix.

Section 4(1) lists those goods which are originating goods because they are wholly obtained or produced in one or more of the NAFTA countries. Section 4(3) provides that goods, produced entirely in the NAFTA countries from originating materials, are originating goods.

For most other goods, section 4(2)(a) through (c) sets forth the basic rules of origin for goods which are produced with any non-originating material content. Essential to these rules in section 4(2) are the specific rules of General Note 12(t), HTSUS, which are incorporated by reference in Schedule I of the Appendix. Under paragraph (a) of Section 4(2), a good will qualify as an originating good only if all non-originating materials used in the production of the good undergo the applicable change in tariff classification, set forth in General Note 12(t), as a result of processing performed entirely in the NAFTA countries. For certain cases as specified by the rules in General Note 12(t), the provision in section 4(2)(b) requires that a regional value content requirement must be satisfied in addition to a change in tariff classification, and, for other cases as specified by the rules in General Note 12(t), the provision in section 4(2)(c) requires that only a regional value content requirement must be satisfied. In all cases, the good must also satisfy all other requirements of the Appendix.

Under the remaining general rules of origin, set forth in sections 4(4)(a) and (b), a good may qualify as an originating good under a regional value content requirement if the non-originating materials fail to change tariff classification because they were imported together in an unassembled condition and were classified at that time under GRI 2(a), HTSUS, as the assembled good, or because they are classified as parts in the same subheading as the good in which they are used and that subheading specifically provides for both the good and parts of the good. These rules do not apply to goods provided for in Chapters 61 through 63.

De Minimis

Section 5 sets forth *de minimis* rules for goods which may be considered to qualify as originating goods even though they fail to qualify as originating goods under the rules in section 4. There are three separate *de minimis* rules.

Subject to the exceptions in section 5(3), sections 5(1) and (2) provide for the situation in which not all non-originating materials undergo a required change in tariff classification. Under this *de minimis* rule, if the value of all such non-originating materials is not more than 7 percent of the transaction value of the good, or, if applicable, the total cost of the good, the good may be considered to be an originating good, provided that it otherwise satisfies any applicable regional value content requirement and the other requirements of the Appendix.

Section 5(5) provides for the situation in which a good, which is subject to an applicable regional value content requirement, is considered to be an originating good without satisfying the regional value content requirement if the value of all non-originating materials is not more than 7 percent of the transaction value of the good, or, if applicable, the total cost of the good.

Sections 5(6) and (7) provide for the situation in which certain fibers or yarns used in the production of a component of a textile good do not undergo a required change in tariff classification. Under this de minimis rule, the textile good is considered to be an originating good if the total weight of the non-originating fibers or yarns is not more than 7 percent of the total weight of the component.

Regional Value Content (RVC)

Section 6 sets forth the basic rules which apply for purposes of determining whether an imported good, other than an automotive good of sections 9 or 10, satisfies a minimum regional value content (RVC) requirement. With certain exceptions, there is an option to choose either of two methods for calculating the regional value content: the Transaction Value Method (TVM) and the Net Cost Method (NCM). Both methods require a determination of the Value of Non-Originating Materials (VNM) used in the production of the good for which the RVC calculation is required.

TRANSACTION VALUE METHOD (TVM)

As provided in section 6(2), the RVC calculated under the TVM is based on a formula in which the VNM used to produce a good be subtracted from the "transaction value" (TV), the remainder of which is then divided by the TV to obtain the RVC for the good. In this case, the TV is the value determined in accordance with the provisions of Schedule II of the Appendix with respect to the transaction in which the producer sells the good. The TV is subject to certain adjustments. The calculation of the VNM for the TVM is addressed in subsections (4), (5) and (10) of section 6.

Subsections (7), (8) and (9) of section 6 set forth the procedure by which a producer may choose to change from the TVM to the NCM for calculation of the RVC of a good if, during a verification of origin by a customs administration, it is determined that the TV must be adjust or is unacceptable. Schedule III of the Appendix sets forth the criteria under which a TV is unacceptable. A producer, however, does not lose any rights of review and appeal of the customs administration's determination if the producer chooses to recalculate under the NCM.

NET COST METHOD (NCM)

As provided in section 6(3), the RVC calculated under the NCM is based on a formula in which the VNM used to produce a good be subtracted from the NC incurred by the producer, the remainder of which is divided by the NC to obtain the RVC for the good. NC is calculated by subtracting certain excluded costs from the total cost incurred in the production of the good. Section 6(12) sets forth the criteria for determining the total cost. Sections 6(13) and 6(14) set forth the criteria for determining the value of excluded costs.

Section 6(15) provides a producer with the option to average, over a certain period, the NC and the VNM for purposes of calculating the RVC for goods produced during that period. If estimated costs are used in the calculation, section 6(18) places certain obligations on the producer to perform a year-end analysis and to inform certain persons if the analysis results in a conclusion that the goods do not satisfy the RVC as claimed.

MATERIALS

Section 7, together with Schedule VIII of the Appendix, sets forth the basic rules regarding the valuation of materials, the treatment of materials with regard to the change in tariff requirement, and the regional value content requirement. Sections 9 and 10 set forth specific rules that apply only to certain automotive goods.

VALUATION OF MATERIALS

Generally, under section 7(1), the value of a material is (1) the customs value for the material if the producer imports the material, (2) the transaction value, as determined under Schedule VIII of the Appendix, with regard to the transaction in which the producer acquires the material, or (3) other value as determined under Schedule VIII of the Appen-

dix if there is no transaction value or the transaction value is unacceptable. Certain costs, identified in section 7(1)(c) through (f) must be added to the value if not already included.

There are different provisions in the Appendix for determining the value of materials that are non-originating materials used in the production of certain automotive goods in sections 9 and 10. Furthermore, the values of indirect materials, packing materials, and intermediate materials are determined under different provisions in the Appendix.

Intermediate Materials

Section 7(4) through (6) provides a producer with an option to designate a self-produced material as an "intermediate material" and thereby use the total cost of the intermediate material as the value of that material for purposes of the regional value content of the good into which the intermediate material is incorporated. This will allow a producer to use the total cost of the intermediate material as an "originating" cost if the material qualifies as an originating material under the Appendix.

This option does not apply with respect to certain automotive goods of Sections 9 and 10 because special rules for those goods require the "tracing" of the value of certain non-originating materials regardless of the degree of further processing or incorporation into another material. Furthermore, under a proviso in Section 7(4), no self-produced material subject to a regional value content requirement may be designated as an intermediate material if it contains a self-produced submaterial that was subject to a regional value content requirement and that was designated as an intermediate material.

Sections 7(7) through (9) provide for the situation in which, during a verification of origin of a good, an intermediate material is determined to be non-originating. A producer has the option to rescind that designation and redesignate another self-produced material within 30 days of notification after notification of the customs administration's determination. This can be done only once, but the producer retains any rights to review and appeal of the determination.

Indirect Materials; Packaging Materials; Packing Materials; Accessories and Spare Parts

Sections 7(10) through (13) and Section 7(14) provide for the treatment of certain materials that are either considered to be "originating materials" or are disregarded with respect to their actual origin for purpose of the change in tariff classification requirement of the Appendix. These sections also set forth the different treatment of these materials for purposes of the regional value content requirement of the Appendix. These sections also provide for determining the value of these materials.

Fungible Materials; Fungible and Commingled Goods

Section 7(14) provides for the determination of the origin of materials when fungible non-originating and originating materials are used in the

production of a good, and for the determination of the origin of goods which are commingled, fungible originating and non-originating goods. The inventory management methods for these purposes are set forth in Schedule X of the Appendix.

AUTOMOTIVE GOODS

Light-duty automotive goods and heavy-duty automotive goods, as defined in Section 2 and Section 8, are subject to a regional value content requirement, under the net cost method, in addition to a change in tariff requirement. However, these goods are subject to special rules for determining the value of non-originating materials in the RVC calculation. Section 9 provides the rules for tracing the value of non-originating materials incorporated into light-duty automotive goods. Section 10 provides the rules for determining the value of non-originating materials incorporated into heavy-duty automotive goods.

LIGHT-DUTY AUTOMOTIVE GOODS

The tracing rule for light-duty automotive goods provides that the VNM for the calculation of the RVC for these goods shall be the total of the value of all non-originating materials that are imported from a non-NAFTA territory and are listed in Schedule IV (defined as "traced material"), if the traced materials are ultimately incorporated into the good. A traced material is always considered a non-originating material for purposes of the value of non-originating materials at any stage of assembly up to the final production of a light-duty vehicle.

Generally, the value of a traced material is the value determined at the time it is received by the first person who takes title in a NAFTA country. However, section 9(2) sets forth in detail the specific situations and conditions under which the value of these traced materials will be accepted. If the producer of the good is also the importer of the traced material, the customs value, plus certain costs identified in Section 9(4), is the value for the VNM. If the producer is not the importer, then various alternatives are presented for determining the value of a traced material.

HEAVY-DUTY AUTOMOTIVE GOODS

The rules for determining the value of non-originating materials in heavy-duty automotive goods require that the value of all non-originating materials listed on Schedule V (defined as "listed material") be included in VNM of the regional value content calculation for any good at any stage of assembly if those listed materials are eventually incorporated into an engine, transmission and engine or transmission assembly for use as original equipment in a heavy-duty vehicle, and ultimately into a heavy-duty vehicle. The rules also require that any other material that is non-originating used by the producer be included in the VNM of the regional value content calculation.

Generally, the value of these materials is the transaction value with respect to the material, as determined in section 10(2). However, section

10(1) sets forth in detail the specific situations and conditions under which the customs value may be used as the transaction value, and under which a transaction value with respect to these materials or, in certain circumstances, the submaterials used in making the materials, will be accepted.

OPTION TO AVERAGE RVC

Section 11 provides that, concerning motor vehicles, a producer has the option to average over its fiscal year the net cost and the value of non-originating materials in order to calculate the regional value content for a designated category of motor vehicles. This choice must be made timely and may not be rescinded. The categories are set forth in section 11(5).

Section 12 provides that, concerning automotive parts, a producer has the option to average the net cost and the value of non-originating materials in order to calculate the regional value content for designated categories of automotive parts. The categories are set forth in section 12(4) and the averaging periods are set forth in section 12(6).

SPECIAL REGIONAL VALUE CONTENT REQUIREMENTS; NEW OR REFIT PLANT

Section 13(1) sets forth the scheduled increases in the regional value content percentage for different automotive goods. Sections 13(2), 13(4) and 13(7) set forth a special 50 percent regional value content level, the averaging periods and the categories of motor vehicles, if a producer chooses to average, for the initial production of motor vehicles at new or refit plants.

ACCUMULATION OF PRODUCTION

Section 14 sets forth the rules by which a producer of a good may choose to accumulate the production of producer of a material that is used in the good. The effect of accumulation is to treat the production processes of both producers as the production of a single producer for the purpose of determining whether the final good qualifies as an originating good under the rules of origin of the Appendix.

INFORMATION UNAVAILABLE FOR VERIFICATION OF ORIGIN OR VALUE OF A MATERIAL OR GOOD

Section 15 provides that, in the event a producer of a good or a material, "for reasons beyond the control" of that producer, is unable to produce the information necessary for the verification of the originating status or value of a good or material during a verification of origin of a good, the Customs Service is required to take certain factors into consideration before making a final determination.

TRANSSHIPMENT

Section 16 sets forth the rule that with certain exceptions, an originating good loses its originating status and is treated as a non-originating good if, subsequent to the production in a NAFTA country that

qualifies the good as originating, the good undergoes production in a territory outside that of a NAFTA country. The good is considered to be entirely non-originating.

Non-Qualifying Operations

Section 17 sets forth the basic rule that a good is not an originating good by reason of mere dilution with a substance that does not materially alter the characteristics of the good or by any other production method or pricing practice that the object of which is to circumvent the rules of origin of the Appendix.

Schedule II

Schedule II sets forth the manner in which the regional value content of a good is to be determined under the transaction value method (Article 402.2). Pursuant to section 2 of the Schedule, transaction value is determined on a F.O.B. basis and is defined as the price actually paid or payable for the good, determined in accordance with section 3, and adjusted in accordance with section 4. The price actually paid or payable is defined as "the total payment made or to be made by the buyer to or for the benefit of the seller." However, this does not include certain costs or charges provided the latter are distinguished from the price actually paid or payable, e.g., duties and taxes paid in the country in which the buyer is located in respect of the goods, and dividends.

Additions to the price actually paid or payable are made for the value of "assists," as well as for commissions, packaging materials, royalties and proceeds. The additions are determined with respect to amounts recorded on the books of the producer.

Schedule III

Schedule III addresses the circumstances under which transaction value of a good does not exist or is unacceptable (Article 402.5). For example, transaction value does not exist where a good is not the subject of a sale or where there is a condition or consideration for which a value cannot be determined.

The principal situation in which transaction value is unacceptable is where the producer and buyer are related persons. The mere fact that they are related does not render transaction value unacceptable, however. Should a customs administration consider that the relationship influences the price it shall communicate those grounds to the producer and afford the latter an opportunity to respond. There are several methods for validating related party sales. However, if the producer is unable to demonstrate that the relationship did not influence the price actually paid or payable, the use of transaction value is precluded.

Schedule VII

Schedule VII provides methods to reasonably allocate costs to a good that are included total costs pursuant to sections 5(8), 6(11), 7(6), 7(12)(b)(ii) and 10(1(a)(i) of the Appendix, section 4(7) of Schedule II and section 5(7) of Schedule VIII.

SCHEDULE VIII

In contrast with Schedule II which concerns the value of a *good,* Schedule VIII deals with the value of a *material* used in the production of a good (Article 402.9). The determination of the value of a material is a necessary component of all regional value content calculations. The principal method of determining the value of a material for origin purposes is transaction value. Where there is no transaction value or transaction value is unacceptable, the value of a material is to be based upon the methods set forth in sections 6–11 of Schedule VIII. The methods are derived from Articles 2 through 7 of the Customs Valuation Code and are to be applied sequentially in the following order: the transaction value of identical materials; the transaction value of similar materials; "deductive" value; "computed" value; and the "fallback" method.

SCHEDULE IX

Schedule IX provides methods to determine the value of non-originating materials under the transaction value method, where non-originating materials that are the same as another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good.

SCHEDULE X

Schedule X provides the inventory management methods which may be used to determine whether a good is an originating good where originating and non-originating fungible materials are used in the production of a good, or where originating and non-originating fungible goods are commingled and exported in the same form.

SCHEDULE XI

Schedule XI provides the methods for determining whether interest costs incurred by a producer are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located for purposes of calculating non-allowable interest costs.

SCHEDULE XII

Schedule XII provides the references to the publications that constitute the understanding of the recognized consensus or substantial authoritative support in the territory of each NAFTA country for purposes of the Generally Accepted Accounting Principles in each NAFTA country.

Part 191:

A cross-reference is added to § 191.0 (scope) as regards the additional NAFTA drawback provisions contained in new Part 181.

COMMENTS

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to

Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to these interim regulations because they are within the foreign affairs function of the United States. A failure to have regulations in place, setting forth the procedures implementing the preferential tariff treatment and related provisions of the North American Free Trade Agreement, on the date the North American Free Trade Agreement Implementation Act is effective, January 1, 1994, would provoke undesirable international consequences. In addition, because these regulations establish procedures which the public needs to know in order to claim the benefit of a tariff preference under the North American Free Trade Agreement Implementation Act, it is determined pursuant to 5 U.S.C. 553(b)(B), that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(1) and (d)(3) for dispensing with a delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0205. The use of the Certificate of Origin on Customs Form 434, as provided for in § 181.11 of these regulations, has been separately reviewed and approved by the Office of Management and Budget under control number 1515–0204.

The collections of information in these regulations are in §§ 12.132, 181.11, 181.22, 181.32, 181.47, 181.53, 181.64, 181.72, 181.82, 181.93,

181.94, 181.95, 181.96, 181.102, 181.113, 181.115 and 181.116 and in the Appendix to Part 181. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the NAFTA and the Act and will be used by the U.S. Customs Service to determine eligibility for a tariff preference or other rights or benefits under the NAFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 27,468 hours.

Estimated average annual burden per respondent/recordkeeper: 6.31 hours.

Estimated number of respondents and/or recordkeepers: 4,350.

Estimated annual frequency of responses: 12.30.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Canada, Customs duties and inspection, Marking, Mexico, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

19 CFR Part 24

Accounting, Canada, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 123

Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 134

Canada, Country of origin, Customs duties and inspection, Labeling, Marking, Mexico, Packaging and containers, Trade agreements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 177

Administrative practice and procedure, Courts, Judicial proceedings, Rulings, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free-Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

AMENDMENTS TO THE REGULATIONS

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

PART 10–ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * * * *

2. Section 10.8 is amended by redesignating paragraphs (a) through (l) as (b) through (m) and adding a new paragraph (a) to read as follows:

§ 10.8 Articles exported for repairs or alterations.

(a) This section applies to all articles returned to the United States after having been exported for repairs or alterations other than such articles which are returned from Canada or Mexico (see § 181.64 of this chapter).

* * * * * * *

3. In § 10.31, paragraph (f) is amended by adding a sentence at the end to read as follows:

§ 10.31 Entry; bond.

* * * * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carry-

ing out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada or Mexico and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security shall be required if the entered article is a good originating in Canada or Mexico within the meaning of General Note 12, HTSUS.

* * * * * * *

4. In § 10.36a, the first sentence of paragraph (a) is amended by removing the words "(as defined in paragraph (a) of § 10.8)" and adding, in their place, the words "(as defined in §§ 10.8 and 181.64 of this chapter)".

5. In § 10.66, paragraph (c)(1)(iii) is amended by removing the reference "§§ 10.8(d), (f), (g), and (h)" and adding, in its place, the reference "§§ 10.8(e), (g), (h), and (i)".

6. In § 10.67, paragraph (c) is amended by removing the reference "§ 10.8(d), (f), (g), and (h)" and adding, in its place, the reference "§ 10.8(e), (g), (h), and (i)".

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * * * *

2. Section 12.132 is added to read as follows:

§ 12.132 Textile and apparel goods under the North American Free Trade Agreement.

The provisions of § 12.130(f) of this part regarding submission of a country of origin declaration shall apply to all textile and apparel goods which are subject to the provisions of Annex 300–B of the North American Free Trade Agreement (NAFTA). Although a separate country of origin declaration shall not be required for such goods for NAFTA purposes, the following additional requirements shall apply for purposes of this section:

(a) All commercial importations of textile and apparel goods shall be accompanied by the appropriate declaration;

(b) A declaration by each U.S., Canadian, and/or Mexican manufacturer or producer of the goods, and, if there are multiple manufacturers or producers, a separate declaration by each manufacturer or producer shall be furnished by the importer. Packaging operations shall not be considered manufacture or production for purposes of this paragraph; and

(c) If the district director is unable to determine the country of origin of the goods because the information contained in a declaration is in-

complete, the shipment to which that declaration pertains shall not be entitled to preferential tariff treatment or any other benefit under the NAFTA for which it would otherwise be eligible.

PART 24–CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 31 U.S.C. 9701, unless otherwise noted.

* * * * * * *

2. Section 24.22 is amended by revising paragraph (g)(1) and the introductory text of paragraph (g)(2)(i)(A) to read as follows:

§ 24.22 Fees for certain services.

* * * * * * *

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section, a fee of $6.50 during the period from January 1, 1994 through September 30, 1997, and a fee of $5 after such period, shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the customs territory of the United States.

(2) * * *

(i)(A) Except during the period from January 1, 1994 through September 30, 1997, persons whose journey:

* * * * * * *

3. Section 24.23 is amended by revising paragraph (c)(3) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * * * *

(c) * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply either to goods originating in Canada within the meaning of General Note 9, HTSUS, or to goods originating in Canada within the meaning of General Note 12, HTSUS, where such goods qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. Where originating goods as described in the preceding sentence are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees shall apply only to those goods which are not originating goods.

PART 123 – CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * * * *

2. Section 123.0 is amended by adding a sentence at the end to read as follows:

§ 123.0 Scope.

* * * Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 134 – COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

2. Section 134.0 is amended by adding a sentence at the end to read as follows:

§ 134.0 Scope.

* * * Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

3. In § 134.1:

a. Paragraph (b) is amended by removing the period at the end of the second sentence and adding, in its place, the words "; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.";

b. The introductory text to paragraph (d) is amended by removing the period at the end of the first sentence and adding, in its place, the words"; however, for a good of a NAFTA country, the "ultimate purchaser" is the last person in the United States who purchases the good in the form in which it was imported.";

c. Paragraph (d)(1) is amended by removing the period at the end and adding, in its place, the words ", or for a good of a NAFTA country, a process which results in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin.";

d. Paragraph (d)(2) is amended by adding a second sentence;

e. Paragraph (d)(4) is amended by removing the period at the end of the sentence and adding the words ", unless the good is a good of a NAFTA country. In that case, the purchaser of the gift is the ultimate purchaser."; and

f. New paragraphs (g), (h), (i) and (j) are added to read as follows:

§ 134.1 Definitions.

* * * * * * *

(d) * * *

(2)* * * With respect to a good of a NAFTA country, if the manufacturing process does not result in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

* * * * * * *

(g) *Good of a NAFTA country.* A "good of a NAFTA country" is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

(h) *NAFTA.* "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on August 13, 1992.

(i) *NAFTA country.* "NAFTA country" means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of the NAFTA.

(j) *NAFTA Marking Rules.* The "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.

4. In § 134.22:

a. Paragraph (b) is amended by removing the period at the end and adding, in its place, the words "; however, no marking is required for any good of a NAFTA country which is a usual container."; and

b. Paragraph (d) is redesignated paragraph (e) and newly designated paragraph (e)(1) is amended by removing the period at the end of the sentence and adding, in its place, the words "or they are containers of a good of a NAFTA country within the exceptions set forth in paragraph (e), (f), (g), (h), (i), (p) or (q) of § 134.32."

c. A new paragraph (d) is added to read as follows:

§ 134.22 General rules for marking of containers or holders.

* * * * * * *

(d) *Usual containers.*

(1) *"Usual container" defined.* For purposes of this subpart, a usual container means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a spe-

cific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

(2) *A good of a NAFTA country which is a usual container.* A good of a NAFTA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

* * * * * * *

5. In § 134.23, paragraph (a) is amended by removing the word "Containers" at the beginning of the first sentence and adding, in its place, the words "Except for goods of a NAFTA country which are usual containers, containers".

6. In § 134.24:

a. Paragraph (c)(1) is amended by adding the words "or usual containers which are goods of a NAFTA country" after the word "holders" wherever it appears in the first sentence;

b. Paragraph (c)(2) is amended by adding the words "or the usual containers which are goods of a NAFTA country" after the word "holders" in the first sentence; and

c. Paragraph (d)(1) is amended by removing the period at the end and adding, in its place, the words "; however, such marking is not required if the contents are excepted from marking requirements under paragraph (f), (g), or (h) of § 134.32 or, in the case of a good of a NAFTA country, under paragraph (e), (f), (g), (h), (i), (p) or (q) of that section."

7. In § 134.32: paragraph (h) is amended by adding the words ", or in the case of a good of a NAFTA country, must reasonably know," after the word "know"; paragraph (n) is amended by removing the word "and" after the semicolon; paragraph (o) is amended by replacing the period at the end with a semicolon; and paragraphs (p) and (q) are added to read as follows:

§ 134.32 General exceptions to marking requirements.

* * * * * * *

(p) Goods of a NAFTA country which are original works of art; and

(q) Goods of a NAFTA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

8. Section 134.35 is amended by designating the existing text as paragraph (a) and by adding a heading to newly designated paragraph (a) and adding a new paragraph (b) to read as follows:

§ 134.35 Articles substantially changed by manufacture.

(a) *Articles other than goods of a NAFTA country.*

* * * * * * *

(b) *Goods of a NAFTA country.* A good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

9. In § 134.43:

a. Paragraph (a) is amended by removing the word "Articles" at the beginning of the first sentence and adding, in its place, the words "Except for goods of a NAFTA country, articles" and by adding at the end of the paragraph the following sentence: "Goods of a NAFTA country shall be marked by any reasonable method which is legible, conspicuous and permanent as otherwise provided in this part."; and

b. Paragraphs (c)(3) and (d)(3) are amended by adding the words "or in the case of a good of a NAFTA country," after the word "section,".

10. In § 134.44, paragraph (a) is amended by removing the words "classifiable under an item specified" and adding, in their place, the word "described".

11. Section 134.45 is amended by revising paragraph (a) to read as follows:

§ 134.45 Approved markings of country name.

(a) *Language.*

(1) Except as otherwise provided in paragraph (a)(2) of this section, the markings required by this part shall include the full English name of the country of origin, unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the full English name of the country of origin shall be published in the Federal Register and the CUSTOMS BULLETIN.

(2) A good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish.

* * * * * * *

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for Part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * * * *

2. Section 162.0 is amended by adding a sentence at the end to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 174 – PROTESTS

1. The authority citation for Part 174 is revised to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. Section 174.0 is amended by adding a sentence at the end to read as follows:

§ 174.0 Scope.

* * * Provisions applicable to Canadian and Mexican exporters and producers regarding administrative review and appeal of adverse marking decisions under the North American Free Trade Agreement are contained in part 181 of this chapter.

3. In § 174.12:

a. The word "or" at the end of paragraph (a)(4) is removed;

b. Paragraph (a)(5) is redesignated (a)(6);

c. Newly designated paragraph (a)(6) is amended by removing the words "paragraphs (a)(1) through (4)" and adding, in their place, the words "paragraphs (a)(1) through (5)"; and

d. A new paragraph (a)(5) is added to read as follows:

§ 174.12 Filing of protests.

(a) * * *

(5) With respect to a determination of origin under subpart G of part 181 of this chapter, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certificate of Origin covering the merchandise as provided for in § 181.11(a) of this chapter; or

* * * * * * *

4. Section 174.15 is revised to read as follows:

§ 174.15 Consolidation of protests filed by different parties.

(a) *General.* Subject to paragraph (b) of this section, separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

(b) *NAFTA transactions.* The following rules shall apply to a consolidation of multiple protests concerning a determination of origin under subpart G of part 181 of this chapter if one of the protests is filed by or on behalf of an exporter or producer described in § 174.12(a)(5) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of § 181.121 of this chapter. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the district director in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in § 181.121 of this chapter.

5. Section 174.29 is amended by adding after the second sentence the following new sentence: "If a protest of an exporter or producer under § 174.12(a)(5) of this part is allowed in whole or in part, any monies found to have been collected in excess shall be refunded to the party who paid the monies even if such party did not file an appropriate and timely protest under this part."

PART 177 – ADMINISTRATIVE RULINGS

1. The general authority citation for Part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, unless otherwise noted.

* * * * * * *

2. Section 177.0, first sentence, is amended by adding at the end the words ", other than advance rulings under Article 509 of the North American Free Trade Agreement (see subpart I of part 181 of this chapter)".

3. Section 177.1(c), first sentence, is amended by removing the words "A ruling may be requested" and adding, in their place, the words "Except as otherwise provided in subpart I of part 181 of this chapter, a ruling may be requested under this part".

PART 178 – APPROVAL OF
INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. In § 178.2, the column headed "19 CFR Section" is amended by removing the reference "§ 10.8(e)" and adding, in its place, the reference "§ 10.8(f)".

1. Part 181 is added to read as follows:

PART 181 – NORTH AMERICAN FREE TRADE AGREEMENT

SUBPART C – IMPORT REQUIREMENTS

SUBPART D – POST-IMPORTATION DUTY REFUND CLAIMS

SUBPART E – RESTRICTIONS ON DRAWBACK AND DUTY-DEFERRAL PROGRAMS

SUBPART F – COMMERCIAL SAMPLES, PRINTED ADVERTISING MATERIALS, AND GOODS RETURNED AFTER REPAIR OR ALTERATION

SUBPART G – ORIGIN VERIFICATIONS AND DETERMINATIONS

SUBPART H – PENALTIES

SUBPART I – ADVANCE RULING PROCEDURES

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, Pub. L. 103–182, 107 Stat. 2057.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

§ 181.0 Scope.

This part implements the duty preference and related Customs provisions applicable to imported goods under the North American Free Trade Agreement (the NAFTA) entered into on August 13, 1992, and under the North American Free Trade Agreement Implementation Act (107 Stat. 2057)(the Act). Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the Customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the NAFTA and the Act are contained in parts 10, 12, 24, 134 and 174 of this chapter.

SUBPART A—GENERAL PROVISIONS

§ 181.1 Definitions.

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular subpart, section or other portion of this part:

(a) *Canada.* "Canada", when used in a geographical rather than governmental context, means the territory of Canada as defined in Annex 201.1 of the NAFTA.

(b) *Commercial importation.* "Commercial importation" means the importation of a good into the United States, Canada or Mexico for the purpose of sale, or any commercial, industrial or other like use.

(c) *Customs administration.* "Customs administration" means the competent authority that is responsible under the law of the United States, Canada or Mexico for the administration of its customs laws and regulations.

(d) *Customs duty.* "Customs duty" means any customs or import duty and a charge of any kind imposed in connection with the importation of a

good, including any form of surtax or surcharge in connection with such importation, other than any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the General Agreement on Tariffs and Trade, or any equivalent provision of a successor agreement to which the United States, Canada and Mexico are party, in respect of like, directly competitive or substitutable goods of the United States, Canada or Mexico, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to the domestic law of the United States, Canada or Mexico and that is not applied inconsistently with Chapter Nineteen of the NAFTA;

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and

(5) Fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to the provisions of Chapter Seven of the NAFTA.

(e) *Determination of origin.* "Determination of origin" means a determination as to whether a good qualifies as a good originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(f) *Exporter.* "Exporter" means an exporter located, and required under this part to maintain records regarding exportations of a good, in the United States, Canada or Mexico.

(g) *Generally Accepted Accounting Principles.* "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support in the United States, Canada or Mexico with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally Accepted Accounting Principles under this definition may encompass broad guidelines of general application as well as detailed standards, practices and procedures.

(h) *HTSUS.* "HTSUS" means the Harmonized Tariff Schedule of the United States.

(i) *Importer.* "Importer" means an importer located, and required under this part to maintain records regarding importations of a good, in the United States, Canada or Mexico.

(j) *Intermediate material.* "Intermediate material" means an "intermediate material" as defined in the appendix to this part.

(k) *Marking Rules.* "Marking Rules" means the "NAFTA Marking Rules" as defined in § 134.1(j) of this chapter.

(l) *Measure.* "Measure" means any law, regulation, procedure, requirement or practice.

(m) *Mexico.* "Mexico", when used in a geographical rather than governmental context, means the territory of Mexico as defined in Annex 201.1 of the NAFTA.

(n) *NAFTA.* "NAFTA" means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (107 Stat. 2057).

(o) *NAFTA drawback.* "NAFTA drawback" means any drawback, waiver or reduction of U.S. customs duty provided for in subpart E of this part.

(p) *Net cost of a good.* "Net cost of a good" means the "net cost of a good" as defined in the appendix to this part.

(q) *Originating.* "Originating", when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(r) *Person.* "Person" means a natural person or an enterprise.

(s) *Preferential tariff treatment.* "Preferential tariff treatment" means the duty rate applicable to an originating good or to a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies.

(t) *Producer.* "Producer" means a "producer" as defined in the appendix to this part.

(u) *Production.* "Production" means "production" as defined in the appendix to this part.

(v) *Transaction value.* "Transaction value" means "transaction value" as defined in the appendix to this part.

(w) *United States.* "United States", when used in a geographical rather than governmental context, means the territory of the United States as defined in Annex 201.1 of the NAFTA.

(x) *Used.* "Used means "used" as defined in the appendix to this part.

(y) *Value.* "Value" means the value of a good or material for purposes of calculating customs duties or for purposes of applying the provisions of the appendix to this part.

Subpart B—Export Requirements

§ 181.11 Certificate of origin.

(a) *General.* A Certificate of Origin shall be used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

(b) *Preparation of Certificate in the United States.* An exporter in the United States who completes and signs a Certificate of Origin for the purpose set forth in paragraph (a) of this section shall use Customs Form 434 or such other medium or format as approved by the Canadian or Mexican customs administration for that purpose. Where the U.S. exporter is not the producer of the good, that exporter may complete and sign a Certificate on the basis of:

(1) Its knowledge of whether the good qualifies as an originating good;

(2) Its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(3) A completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

(c) *Submission of Certificate to Customs.* An exporter in the United States, and a producer in the United States who has voluntarily provided a copy of a Certificate of Origin to that exporter pursuant to paragraph (b)(3) of this section, shall provide a copy of the Certificate to Customs upon request.

(d) *Notification of Errors in Certificate.* An exporter or producer in the United States who has completed and signed a Certificate of Origin, and who has reason to believe that the Certificate contains information that is not correct, shall within 30 calendar days notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

§ 181.12 Maintenance and availability of records.

(a) *Maintenance of records.* An exporter or producer in the United States who completes and signs a Certificate of Origin shall maintain in the United States, for five years after the date on which the Certificate was signed, all records relating to the origin of a good for which preferential tariff treatment may be claimed in Canada or Mexico, including records associated with:

(1) The purchase of, cost of, value of, and payment for, the good that is exported from the United States;

(2) The purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from the United States; and

(3) The production of the good in the form in which the good is exported from the United States.

Such records shall be maintained in accordance with the Generally Accepted Accounting Principles applied in the United States and may be maintained in hard-copy form, on microfilm or microfiche or in automated record storage devices (for example, magnetic discs and tapes) if associated computer programs are available to facilitate retrieval of the data in a usable form.

(b) Availability of records.

(1) *To Customs.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section shall be made available for examination and inspection by the district director or other appropriate Customs officer in the same manner as provided in § 162.1d of this chapter in the case of U.S. importer records.

(2) *To the Canadian or Mexican customs administration.* If a U.S. exporter or producer receives notification of, and consents to, an origin verification visit by the Canadian or Mexican customs administration under Article 506 of the NAFTA (see § 181.74(e) of this part), such consent shall constitute agreement by the U.S. exporter or producer to

make available to an officer of that customs administration all records required to be maintained under this section and to provide facilities for the inspection thereof. If, during the course of an origin verification of a U.S. producer, the Canadian or Mexican customs administration finds that the U.S. producer has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the United States, that customs administration will so inform the U.S. producer in writing and will give the U.S. producer 60 calendar days to conform the records to those Principles. If a U.S. exporter or producer fails to maintain records or make records available to the Canadian or Mexican customs administration in accordance with the provisions of this section, or if a U.S. producer fails to conform its records to Generally Accepted Accounting Principles as provided in this paragraph, the Canadian or Mexican customs administration may deny preferential tariff treatment to the good that is the subject of the verification visit.

§ 181.13 Failure to comply with requirements.

The district director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part.

Subpart C—Import Requirements

§ 181.21 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for a good under the NAFTA, the U.S. importer shall make a written declaration that the good qualifies for such treatment. The written declaration may be made by including on the entry summary, or equivalent documentation, the symbol "CA" for a good of Canada, or the symbol "MX" for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in § 181.22 of this part and except in the case of a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies (see, however, § 12.132 of this chapter), the declaration shall be based on a complete and properly executed Certificate of Origin which is in the possession of the importer and which covers the good being imported.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section or under § 181.32(b)(2) of this part, the U.S. importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer shall within 30 calendar days make a corrected declaration and pay any duties that may be due. A corrected declaration shall be effected by submission of a letter or other written statement to the Customs office where the original declaration was filed.

§ 181.22 Maintenance of records and submission of certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in

the United States, for five years after the date of importation of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and any other relevant records as specified in § 162.1a(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on a good under § 181.21 of this part shall provide, at the request of the district director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. A Certificate of Origin submitted to Customs under this paragraph or under § 181.32(b)(3) of this part:

(1) Shall be on Customs Form 434, including privately-printed copies thereof, or on such other form as approved by the Canadian or Mexican customs administration, or, as an alternative to Customs Form 434 or such other approved form, in an approved computerized format or such other medium or format as is approved by the Office of Trade Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 434;

(2) Shall be signed by the exporter or producer or the authorized agent of the exporter or producer;

(3) Shall be completed either in the English language or in the language of the country from which the good is exported. If the Certificate is completed in a language other than English, the importer shall also provide to the district director, upon request, a written English translation thereof;

(4) Shall be accepted by Customs for four years after the date on which the Certificate was signed by the exporter or producer; and

(5) May be applicable to:

(i) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical goods into the United States that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer.

(c) *Acceptance of Certificate.* A Certificate of Origin shall be accepted by the district director as valid for the purpose set forth in § 181.11(a) of this part, provided that the Certificate is completed, signed and dated in accordance with the requirements of paragraph (b) of this section. If the district director determines that a Certificate is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer shall be given a period of not less than five working days to submit a corrected Certificate. Acceptance of a Certificate will result in the granting of preferential tariff treatment to the imported good unless, in connection with an origin verification initiated under subpart G of this part or based on a pattern of conduct within the meaning of § 181.76(b) of this part, the district director determines that the imported good does not qualify as an originating good or should not be ac-

corded such treatment for any other reason as specifically provided for elsewhere in this part. A Certificate shall not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(5)(ii) of this section if, based on an origin verification under subpart G of this part, the district director determined that a previously imported identical good covered by the Certificate did not qualify as an originating good.

(d) *Certificate not required.* Provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of this part, a Certificate of Origin shall not be required for:

(1) An importation of a good for which the district director has waived the requirement for a Certificate of Origin because the district director is otherwise satisfied that the good qualifies for preferential tariff treatment under the NAFTA;

(2) A non-commercial importation of a good; or

(3) A commercial importation of a good whose value does not exceed US$2,500, provided that, unless waived by the district director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the good covered by this shipment qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name	Title
Address	Signature and date

If the district director determines that the importation is part of a series of importations undertaken or arranged to avoid a certification requirement, the district director shall require for that importation that the importer have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

§ 181.23 Effect of noncompliance.

If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), the district director may deny preferential tariff treatment to the imported good.

SUBPART D—POST-IMPORTATION DUTY REFUND CLAIMS

§ 181.31 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment on that originating good was made at that time under § 181.21(a) of this part, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 181.32 of this part. Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

§ 181.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall be filed with the district director of the district in which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund shall be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

(5) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law, and if any such protest or petition or request

for reliquidation has been filed, the statement shall identify the protest, petition or request by number and date.

§ 181.33 Customs processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 181.32 of this part, the district director shall determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the district director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the district director shall suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the district director shall suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim.*

(1) *Unliquidated entry.* If the district director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the district director shall take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the district director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the district director shall reliquidate the entry taking into account the claim for refund under this subpart.

(3) *Information to be provided to Canada or Mexico.* If any information is provided to Customs pursuant to § 181.32(b)(4) or (5) of this part, that information, together with notice of the allowance of the claim and the amount of duty refunded pursuant to this subpart, shall be provided by the district director to the customs administration of the country from which the good was exported.

(d) *Denial of claim.*

(1) *General.* The district director may deny a claim for a refund filed under this subpart if the claim was not filed timely, if the importer has not complied with the requirements of this subpart, if the Certificate of Origin submitted under § 181.32(b)(3) of this part cannot be accepted as valid (see § 181.22(c) of this part), or if, following initiation of an origin verification under § 181.72(a) of this part, the district director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which prefer-

ential tariff treatment may be denied or withheld under § 181.72(d), § 181.74(c) or § 181.76(b) of this part.

(2) *Unliquidated entry.* If the district director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the district director shall deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason therefor shall be given to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good.

(3) *Liquidated entry.* If the district director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the district director shall give written notice of the denial and the reason therefor to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good.

Subpart E – Restrictions on Drawback and Duty-Deferral Programs

§ 181.41 Applicability.

This subpart sets forth the provisions applicable to drawback claims and duty-deferral programs under Article 303 of the NAFTA. Except in the case of § 181.42(d), the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001, and on which a claim for preferential tariff treatment pursuant to the NAFTA is made in Canada or Mexico. The requirements and procedures set forth in this subpart for NAFTA drawback are in addition to the general definitions, requirements and procedures for all drawback claims set forth in part 191 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for NAFTA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

§ 181.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) Fees applied under section 22 of the U.S. Agricultural Adjustment Act; and,

(d) Customs duties paid or owed under substitution drawback. There shall be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

§ 181.43 Eligible goods subject to drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in § 181.44(c) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(b)).

§ 181.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in § 181.45 of this part, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a NAFTA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the NAFTA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded shall not exceed 99 percent of the duty paid on such imported merchandise into the United States.

Example 1. Upon the importation of Product X to the United States from Japan, Company A paid \$2.00 in duties. Company A manufactured the imported Product X into Product Y, and subsequently exported it to Mexico. Mexico assessed \$11.00 in duties upon importation of Product Y. Upon presenting a drawback claim in the United States, in accordance with 19 U.S.C. 1313(a), Company A would be entitled to a refund of 99 percent of the \$2.00, or \$1.98. The \$2.00 paid by Company A (less 1 percent) on the importation of Product X into the United States is a lesser amount of duties than the total amount of customs duties paid to Mexico (\$11.00) on Product Y.

Example 2. Upon the importation of Product X into the United States from Hong Kong, Company A entered Product X and paid \$5.00 in du-

ties. Company A manufactured Product X into Product Y, sold it to Company B in Mexico and subsequently exported it to Mexico. Company A reserved its right to drawback. Upon Product Y's importation, Company B was assessed a free rate of duty. Company A's claim for drawback will be denied because Company A is entitled to zero drawback for the reason that, as between the duty paid in the United States and the duty paid in Mexico, the duty in Mexico was zero.

(c) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a NAFTA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported. For purposes of drawback under this subpart, the term "same kind and quality" used in § 1313(b) (see § 191.2(m) of this chapter) shall be read as synonymous with the term "identical or similar good" used in Article 303 of the NAFTA.

Example 1. Upon importation of Product X from Japan to the United States, Company A paid $5.00 in duties. Company A substituted a same kind and quality domestic Product X for the Japanese Product X in its production of Product Y under its 19 U.S.C. 1313(b) drawback contract. Company A sold Product Y to Company B which subsequently exported it to Canada. On the importation of Product Y by Company B, Company B paid the equivalent of US$2.00 in duties assessed by Revenue Canada and waived its right to drawback to Company A. Company A is entitled to obtain drawback under 19 U.S.C. 1313(b) in the United States in the amount of $1.98 (or 99 percent of the US$2.00 equivalent Company B paid in duty to Canada) since that $2.00 was the lesser of the total amount of customs duties paid on the product to either Canada or the United States.

Example 2. Same facts as above example, but Company B paid the equivalent of US$5.00 to Revenue Canada. Company A is entitled to obtain $4.95 in drawback (a refund of 99 percent of $5.00 paid to the United States). Since the same amount of duty was assessed by each country, drawback is allowable because the drawback paid does not exceed the lesser amount paid.

(d) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than $100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (see 19 U.S.C. 1313(f)).

Example. Company Z produced Virginia smoked ham on its Smithfield, Virginia farm, using 4,000 pounds of imported salt in curing the meat. The salt was imported from an HTSUS Column 2 country, with a duty of $200. Upon exportation of the hams to Mexico, Company Z pays $250.00 in duties to Mexico. Company Z is entitled to drawback of the full 100 percent of the $200.00 in duties it paid on the importation of the

salt into the United States because that $200.00 is a lesser amount than the total amount of customs duties paid to Mexico on the exported meat.

(e) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than $100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

Example. A Swedish-made jet aircraft engine is repaired in the United States using imported parts from Korea on which $160.00 in duties have been paid by Company W. The engine is subsequently exported to Canada by Company W and Company W pays the equivalent of US$260.00 in duties to Canada. Upon showing the country in which the engine was manufactured and a description of the processing performed thereon in the United States on Customs Form 7575–A, appropriately modified, Company W is entitled to the full refund of the duties paid to the United States since that $160.00 was a lesser amount than the duties paid on the engine to Canada.

§ 181.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States:

(1) If subsequently exported to Canada or Mexico,

(2) If used as a material in the production of another good that is subsequently exported to Canada or Mexico, or

(3) If substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico, is eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part.

Example. Company A imports a dutiable (3 percent rate) Canadian originating good. During Company A's manufacturing process, Company A substitutes a German good of the same kind and quality (on which duty was paid at a 2.5 percent rate) in the production of another good that is subsequently exported to Canada. Company A may designate the dutiable Canadian entry and claim full drawback (99 percent) on the 3 percent duty paid under 19 U.S.C. 1313(b). (Note: NAFTA originating goods will continue to receive full drawback as they cross NAFTA borders for successive stages of production until NAFTA tariffs are fully phased out.)

(b) *Claims under 19 U.S.C. 1313(j)(1) for goods in same condition.* A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in § 181.44 of this part.

Example. X imports a desk into the United States from England and pays $25.00 in duty. X immediately exports the desk to Z in Mexico and Z pays $10.00 in Mexican duties. X can obtain a refund of 99 percent of the $25.00 paid upon importation of the desk into the United States.

(1) *Same condition defined.* For purposes of this subpart, a reference to a good in the "same condition" includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting or grading.

(2) *Commingling of fungible goods.*

(i) *General.* Commingling of completely fungible goods in inventory, such as parts, is permissible (see § 191.141(e) of this chapter) but one must identify entries for designation for same condition drawback; the origin of the goods shall be determined on the basis of the inventory methods set forth in the appendix to this part.

(ii) *Exception.* Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c).* An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c) without regard to the limitation on drawback set forth in § 181.44 of this part. Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.

Example. X orders, after seeing a sample in the ABC Company's catalog, a certain quantity of 2-by-4 lumber from ABC Company located in Honduras. ABC Company, having run out of the specific lumber, ships instead a different kind of lumber. X rejects the lumber because it did not conform to the sample and is asked to send it to a customer of ABC in Canada. X exports it within 90 days of its release from Customs custody. X may recover 99 percent of the $500 duties it paid to U.S. Customs upon the exportation of the lumber, or $495.00.

(d) *Certain goods exported to Canada.* Goods identified in Annex 303.6 of the NAFTA and in sections 203(a)(7) and (8) of the North American Free Trade Implementation Act, if exported to Canada, are eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part.

§ 181.46 Time and place of filing drawback claim.

(a) *Time of filing.* A drawback claim under this subpart shall be filed or applied for, as applicable, within 3 years after the date of exportation

of the goods on which drawback is claimed. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing. Drawback shall be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim. A good subject to a claim for same condition drawback must be exported before the close of the 3-year period beginning on the date of importation of the good into the United States.

(b) *Place of filing.* A drawback claim must be filed in the region(s) where the manufacturing drawback contract is on file, whether a general rate or specific rate, but exportation need not occur from the same region. Generally, for same condition drawback, the claim would be filed with Customs in the port where the examination would take place (see §§ 191.141(b)(3)(ii) and (iii) of this chapter). Customs must be notified at least 5 days in advance of the intended date of exportation in order to have the opportunity to examine the goods.

§ 181.47 Completion of claim for drawback.

(a) *General.* A claim for drawback shall be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback shall be in accordance with the existing provisions of part 191 of this chapter. Claims inappropriately filed or otherwise not completed within the 3-year period specified in § 181.46 of this part shall be considered abandoned.

(b) *Complete drawback claim.*

(1) *General.* A complete drawback claim under this subpart shall consist of the filing of the appropriate completed drawback entry form, proof of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents, certificate(s) of delivery, when necessary, or certificate(s) of manufacture and delivery, and a certification from the Canadian or Mexican importer as to the amount of duties paid.

(2) *Specific claims.* The following documentation, for the drawback claims specified below, must be submitted to Customs in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following shall be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed Customs Form 331, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity

of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) Customs Form 7501 and copies of commercial invoices and the import entry number;

(C) Exporter's summary procedure, if applicable. The exporter's summary procedure must be amended for purposes of this subpart to include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Proof of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred shall be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's Certificate of Origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify Customs if he subsequently provides such an exporter's Certificate of Origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1).* The following shall be submitted in connection with a drawback claim covering a good in the same condition:

(A) A completed Customs Form 7539J. In addition, the tariff classification number of the imported goods shall be recorded on the form;

(B) Customs Form 7501 and copies of commercial invoices. The form must show the entry number, date of entry, port of importation, date of importation, importing carrier, and importer of record or ultimate consignee name and Customs or taxpayer identification number. Explicit line item information shall be clearly noted on the Customs Form 7501 and commercial invoices so that the subject goods are easily discernible;

(C) Customs Form 7505, if applicable, to trace the movement of the imported goods after importation;

(D) The certificate of delivery portion of Customs Form 331, if applicable, for purposes of tracing the transfer of ownership of the imported goods from the importer to the claimant. This is required if the drawback claimant is not the original importer of the merchandise which is the subject of a same condition claim;

(E) Customs Form 7512, if applicable. This is required for merchandise which is examined in one region but exported through border points outside of that region. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(F) Notification of intent to export or waiver of prior notice;

(G) Proof of exportation. Either a certified Customs Form 7511 or an uncertified Customs Form 7511 supported by documentary evidence of

exportation to Canada or Mexico such as a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier and signed in ink. Supporting documentary evidence shall establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(H) Waiver of right to drawback. If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred shall be required in order for the claim to be considered complete; and

(I) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following shall be submitted in the case of goods not conforming to sample or specifications or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) Customs Form 7539C, completed and submitted at the time the goods are returned to Customs custody;

(B) Customs Form 7501 and copies of commercial invoices which establish the fact of importation, the receipt of the imported goods and the identity of the party to whom drawback is payable (see § 181.48(c) of this part);

(C) Documentary evidence to support the claim that the goods did not conform to sample or specifications or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or telex or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(D) Customs Form 7512, if applicable; and

(E) Proof of exportation, as provided in paragraph (b)(2)(ii)(G) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph shall be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on foreign-built jet aircraft engines re-

paired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart L of part 191 of this chapter.

(c) *Proof of exportation and evidence of duties paid in Canada or Mexico.* For purposes of this subpart, proof of exportation and satisfactory evidence of payment of duties in Canada or Mexico shall consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, referred to as the Canada Customs Invoice or B–3, presented with either the K–84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate proof of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the "pedimento");

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, respecting the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

§ 181.48 Person entitled to receive drawback.

(a) *Manufacturing drawback.* The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, shall be considered the exporter and entitled to manufacturing drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(b) *Nonconforming or improperly shipped goods drawback.* Only the importer of record or the actual owner of the merchandise or its agent may claim drawback under 19 U.S.C. 1313(c).

(c) *Same condition drawback.* The importer of record on the consumption entry is entitled to claim same condition drawback under 19 U.S.C. 1313(j)(1) unless he has in writing waived his right to claim drawback.

§ 181.49 Retention of records.

All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer (see § 191.5

of this chapter) shall be retained for at least three years after payment of such claims.

§ 181.50 Payment and liquidation of drawback claims.

(a) *General.* When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 181.44 of this part or in accordance with the regular drawback calculation. The liquidation procedures of subpart G of part 191 of this chapter shall control for purposes of this subpart.

(b) *Liquidation final.* The liquidation of a drawback claim shall not become final until the liquidation of the import entry has become final either by operation of law (see 19 U.S.C. 1504) or by filing with Customs a written waiver of the right to protest under 19 U.S.C. 1514 and, except in the case of goods covered by § 181.45 of this part, until the liquidation of the Canadian or Mexican customs entry has become final.

(c) *Accelerated payment.* Accelerated drawback payment procedures shall apply as set forth in § 191.72 of this chapter. However, a person who receives drawback of duties under this procedure shall repay the duties paid if a NAFTA drawback claim is adversely affected thereafter by administrative or court action.

§ 181.51 Prevention of improper payment of claims.

(a) *Double payment of claim.* The person entitled to drawback shall certify to Customs that he has not earlier received payment on the same import entry for the same designation of goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant shall be required to repay any amount paid on the second claim.

(b) *Preparation of Certificate of Origin.* The drawback claimant shall, within 30 days after the filing of the drawback claim under this subpart, submit to Customs a written statement as to whether he has prepared, or has knowledge that another person has prepared, a Certificate of Origin provided for under § 181.11(a) of this part and pertaining to the goods which are covered by the claim. If, following such 30–day period, the claimant prepares, or otherwise learns of the existence of, any such Certificate of Origin, the claimant shall, within 30 calendar days thereafter, disclose that fact to Customs.

§ 181.52 Subsequent claims for preferential tariff treatment.

If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA (post-importation claim) or under any other circumstance after drawback has been granted under this subpart, the appropriate Customs officer shall reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under § 181.44 of this part.

§ 181.53 Waiver or reduction of duty under duty-deferral programs.

(a) *General.*

(1) *Duty-deferral program defined.* For purposes of this section, a "duty-deferral program" means a measure which postpones duty payment upon arrival of a good in the United States, including a measure governing manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, or temporary importations under bond under Chapter 98, HTSUS, until withdrawn or removed for exportation to Canada or Mexico.

(2) *Treatment as withdrawn for consumption.* Where a good imported into the United States pursuant to a duty-deferral program is subsequently exported to Canada or Mexico or is used as a material in the production of another good that is subsequently exported to Canada or Mexico, the exported good shall be treated, for purposes of this section, as if it had been entered or withdrawn for domestic consumption and thus subject to duty.

(3) *Adjustment to duties paid.* Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who exports the good to Canada or Mexico in accordance with paragraphs (b) through (f) of this section, provided that proof of exportation and satisfactory evidence of duties paid in Canada or Mexico (see § 181.47(c) of this part) are submitted within 60 days of the date of exportation.

(b) *Manipulation in warehouse.* Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty shall be paid no later than 60 days after the date of exportation except that, upon presentation of proof of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company B imports toys in bulk and makes a warehouse entry into a Class 8 warehouse, whereupon Company B repackages the toys for retail sale. Upon withdrawal of the goods from the warehouse, $200 in U.S. duty is assessed. Company B exports this merchandise to Mexico and pays $300 in duties. Thirty days after exportation from the United States, Company B submits to Customs proof of exportation and a copy of the Mexican consumption entry ("pedimento") as evidence of the payment of $300 to Mexico. Customs will waive the collection of the

$200 assessment since $200 is a lesser amount than the total amount of duties paid to Mexico.

(c) *Bonded manufacturing warehouse.* Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 days after the date of exportation except that, upon presentation of proof of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for immediate exportation to Canada, U.S. duty is assessed on the basis of the unmanufactured tea in the amount of $900. Company N, however, does not pay the duties at this time. Canada assesses the equivalent of US$800 on the exported ice tea mix. Company N submits to Customs both proof of exportation to Canada and a Canadian K–84 Statement showing payment of $800 in duties to Canada. Company N will only be required to pay $100 in U.S. duties out of the original $900 bill.

(d) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 days after the date of exportation of the treated materials to Canada or Mexico either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon presentation of proof of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported treated materials, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise and pays $90,000 in U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials and Customs cancels the bond charges. Two weeks later, Company Z secures a buyer, Company B, in Canada and exports the merchandise. Upon importation of

the processed zinc to Canada, the equivalent of US$50,000 in duties are assessed against Company B. Company Z would like to claim a NAFTA refund under this section. Company Z must secure from Company B the necessary Canadian documentation to prove exportation and show that $50,000 was paid to Revenue Canada in order for Company Z to obtain a refund of that amount from Customs.

(e) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then exported from the zone to Canada or Mexico, the duty assessed, as calculated under paragraph (e)(1) or (e)(2) of this section, shall be paid no later than 60 days after the date of exportation of the good to Canada or Mexico except that, upon presentation of proof of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(1) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico.

Example. CMG imports $1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or $40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent ($25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and sells them to XYZ who ships them to Mexico. XYZ enters the automobiles in Mexico, pays $20,000 in duty, and does not claim NAFTA preferential tariff treatment. Before the expiration of 60 days from exportation, CMG submits the required documentation showing exportation and payment of duty in Mexico and pays $5,000 in duty to Customs representing the difference between the $25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the $20,000 paid to Mexico by XYZ.

(2) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its admission to the zone.

Example. O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon entry of the refined goods from the zone by O&G, Inc., U.S. duty is assessed on the imported crude petroleum in the amount of $700 rather than on the refined goods (which would been assessed $1,200). O&G, Inc. then ships the refined goods to Canada. D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US$1,500

on the goods. D&O claims NAFTA preferential tariff treatment in Canada. O&G, Inc. potentially is entitled to a duty remission of the full $700 assessed in the United States. However, if D&O's NAFTA claim is approved and results in a refund of duty by Canada, O&G, Inc.'s actual duty remission or refund will be reduced by that amount of refund received by D&O in excess of $800.

(f) *Temporary importation under bond.* Where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, HTSUS) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 days after the date of exportation except that, upon presentation of proof of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at $6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in the amount of $6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that $6,200 was assessed but not yet paid to Mexico, and Customs sends a bill to Company A for the $6,000 in U.S. duty which Company A pays. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of evidence of the finality of the collection of $6,200 by Mexico, is entitled to a refund of the full $6,000 in U.S. duty.

(g) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico. Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(h) *Failure to timely provide evidence of duties paid or owed to Canada or Mexico.* If the person who exports the goods to Canada or Mexico fails to provide satisfactory evidence of duties paid or owed to Canada or Mexico within the 60-day period specified in this section, that person will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(i) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs shall reliquidate the NAFTA drawback claim and obtain a refund of the amount waived or reduced in excess of the amount permitted to be waived or reduced under this section.

§ 181.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart shall be subject to such verification, including verification with the Canadian or Mexican customs administration of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as Customs may deem necessary.

Subpart F—Commercial Samples, Printed Advertising Materials, and Goods Returned After Repair or Alteration

§ 181.61 Applicability.

This subpart sets forth the rules which apply for purposes of duty-free entry of commercial samples of negligible value and printed advertising materials imported from Canada or Mexico, as provided for in Article 306 of the NAFTA, and for purposes of the re-entry of goods after repair or alteration in Canada or Mexico, as provided for in Article 307 of the NAFTA.

§ 181.62 Commercial samples of negligible value.

(a) *General.* Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, "commercial samples of negligible value" means commercial samples which have a value, individually or in the aggregate as shipped, of not more than US$1, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry.* Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods;

(2) If valued over US$1, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples; and

(3) In the case of textiles and textile products valued over US$1, the samples meet the additional requirements set forth in paragraph (c) of this section.

(c) *Textile samples.* Textile commercial samples of negligible value imported from Canada or Mexico which qualify for duty-free entry under subheading 9811.00.60, HTSUS, are not subject to visa require-

ments or quota restraint levels. However, textile commercial samples valued over US$1 shall qualify for such duty-free entry only if the additional requirements set forth in paragraphs (c)(1) and (c)(2) of this section are met.

(1) *Statement on invoice or mail declaration.* The invoice, or the mail declaration in the case of a mail shipment, accompanying imported textile commercial samples shall contain the statement "MUTILATED SAMPLES–9811.00.60". If the invoice or mail declaration does not contain the required statement, or if the merchandise has not been properly marked, torn, perforated or otherwise treated prior to importation so as to be unsuitable for sale or for use other than as a sample as provided in paragraph (c)(2) of this section, the shipment will not qualify for duty-free entry under subheading 9811.00.60, HTSUS, and, if the samples are not goods originating in Canada or Mexico within the meaning of General Note 12, HTSUS, shall be denied entry unless a proper visa, visa waiver or exempt certification is presented. If a proper visa, visa waiver or exempt certification is presented, the merchandise may be entered under the appropriate tariff provision in HTSUS Chapters 1 through 97.

(2) S*tandards for mutilation of textile samples.* Provided that the other requirements set forth in this section are met, compliance with the mutilation standards set forth in this paragraph shall be considered sufficient to qualify the imported samples for duty-free entry under subheading 9811.00.60, HTSUS. Variances from the specific mutilation standards set forth in this paragraph, such as in regard to the size or location of the cut, hole or marking, may be allowed at the discretion of the appropriate Customs officer at the port of entry only if the variance from the mutilation standard renders the article unsuitable for sale or for use except as a commercial sample. For purposes of this paragraph, an "indelible" marking is one that is incapable of being erased or obliterated.

(i) *Wearing apparel.*

(A) *Cutting or tearing.* A section may be cut or torn from the main body of the garment. This cut shall be visible on the outside of the garment and may not be on a seam or border. The cut or tear shall be a minimum of 2 inches in length, unless a shorter cut or tear is required by the size of the garment.

(B) *Marking.* The garment may be marked with the word "SAMPLE" in indelible ink or paint. The size of the word "SAMPLE" shall be at least one inch in height and not less than 2 inches in length unless a smaller marking is required by the size of the garment. The word "SAMPLE" shall be placed in a prominent area of the garment which will be visible when worn and shall be in contrasting color to the garment.

(C) *Punching or cutting.* A hole or section, measuring at least 1 inch in diameter, may be punched or cut into the outside of the garment. The hole or section shall be punched or cut in a prominent area of the garment and in a location where it cannot be covered by a patch or emblem.

(ii) *Fabrics in continuous lengths or rolls.*

(A) *Fabric not over 2 yards in length.* Fabric not exceeding 2 yards in length either may be marked with the word "SAMPLE" in indelible ink or paint on the face or front of the fabric and in contrasting color to the fabric or may be perforated with the word "SAMPLE" at intervals of one-half yard for the entire length of the fabric. In either case, the word "SAMPLE" shall be at least 1 inch in height and not less than 5 inches in length and shall be placed at a perpendicular angle across the fabric.

(B) *Fabric over 2 yards in length.* Fabric exceeding 2 yards in length, even if mutilated in accordance with paragraph (c)(2)(ii)(A) of this section, shall not be considered commercial samples eligible for duty-free entry under this section.

(iii) *Fabric swatches.*

(A) *Cutting.* A section or hole, not less than 1 inch in diameter, may be cut in the main body of a fabric swatch.

(B) *Marking.* A fabric swatch may be marked with the word "SAMPLE" in indelible ink or paint in contrasting color to the swatch. The word "SAMPLE" shall be at least 1 inch in height and at least 2 inches in length.

(C) *Mutilation not required.* Fabric swatches 8 inches square or smaller need not be cut, marked or otherwise mutilated unless, in their condition as imported, they are suitable for use other than as a commercial sample.

(iv) *Footwear.*

(A) *Drilling.* A hole at least one-quarter inch in diameter may be drilled in the sole of each article of footwear.

(B) *Marking or labeling.* Each article of footwear either may be marked with the word "SAMPLE" in indelible ink or paint in contrasting color to the footwear or may have a permanently attached label which reads "SAMPLE". The marking or label shall be placed on a readily visible part of the footwear.

(v) *Other articles.* For other textile articles, such as furnishings or luggage, a section or hole may be cut, punched or torn from the article or the word "SAMPLE" may be marked on the article in indelible ink or paint in contrasting color to the article. The hole, cut or marking shall appear on the outer surface of the article in a location which is visible when the article is in use and shall be of sufficient size to ensure, to the satisfaction of the appropriate Customs officer, that the article is unsuitable for sale or for use except as a commercial sample.

§ 181.63 Printed advertising materials.

Printed advertising materials imported from Canada or Mexico qualify for duty-free entry. For purposes of this section, "printed advertising materials" means those goods classified in Chapter 49, HTSUS, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, which are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

§ 181.64 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free or reduced-duty treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Mexico, whether or not pursuant to a warranty, and goods returned after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. Goods returned after having been repaired or altered in Canada other than pursuant to a warranty are subject to duty upon the value of the repairs or alterations using the applicable duty rate under the United States-Canada Free-Trade Agreement (see § 10.301 of this chapter), provided that the requirements of this section are met. For purposes of this section, "repairs or alterations" means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Example. Glass mugs produced in the United States are exported to Canada for etching and tempering operations, after which they are returned to the United States for sale. The foreign operations exceed the scope of an alteration because they are manufacturing processes which create commercially different products with distinct new characteristics.

(b) *Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a) of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

Example. Unflanged metal wheel rims are exported to Canada for a flanging operation to strengthen them so as to conform to U.S. Army specifications for wheel rims; although the goods when exported from the United States are dedicated for use in the making of wheel rims, they cannot be used for that purpose until flanged. The flanging operation does not constitute a repair or alteration because that operation is necessary for the completion of the wheel rims.

(c) *Documentation.*

(1) *Declarations required.* Except as otherwise provided in this section, the following declarations shall be filed in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty free or subject to duty only on the value of the repairs or alterations performed abroad:

(i) A declaration from the person who performed such repairs or alterations, in substantially the following form: I/We, ______________, declare that the goods herein specified are the goods which, in the condition in which they were exported from the United States, were received by me (us) on __________, 19__, from ______________ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that such repairs or alterations were (were not) performed pursuant to a warranty; that the full cost or (when no charge is made) value of such repairs or alterations is correctly stated below; and that no substitution whatever has been made to replace any of the goods originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of goods and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see Subchapter II, Chapter 98, HTSUS)	Total value of goods after repairs or alterations

______________ Date
______________ Signature
______________ Address
______________ Capacity

(ii) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, ______________, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the goods were not previously imported in bond or admitted into a foreign trade zone or imported in similar status; that such goods were exported from the United States for repairs or alterations from ______________ (port) on __________, 19__; and that the goods entered in their repaired or altered condition are the same goods that were exported on the above date and that are identified in the (above) (attached) declaration.

______________ Date
______________ Signature
______________ Address
______________ Capacity

(2) *Additional documentation.* The district director may require such additional documentation as is deemed necessary to prove actual exportation of the goods from the United States for repairs or alterations, such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill.

(3) *Waiver of declarations.* If the district director concerned is satisfied, because of the nature of the goods or production of other evidence, that the goods are imported under circumstances meeting the requirements of this section, he may waive submission of the declarations provided for in paragraph (c)(1) of this section.

(4) *Deposit of estimated duties.* For goods returned after having been repaired or altered in Canada other than pursuant to a warranty, the district director shall require a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations performed in Canada other than pursuant to a warranty, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty for such goods, shall be limited to the cost or value of the repairs or alterations actually performed in Canada, which shall include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in the United States whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations in Canada, or otherwise.

SUBPART G—ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 181.71 Denial of preferential tariff treatment dependent on origin verification and determination.

Except where a Certificate of Origin either is not submitted when requested under § 181.22(b) of this part or is not acceptable and a corrected Certificate is not submitted or accepted as provided in § 181.22(c) of this part, and except in the case of a pattern of conduct provided for in § 181.76(b) of this part, Customs shall deny or withhold preferential tariff treatment on an imported good, or shall deny a post-importation claim for a refund filed under subpart D of this part, only after initiation of an origin verification under § 181.72(a) of this part which results in a determination that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part.

§ 181.72 Verification scope and method.

(a) *General.* Subject to paragraph (e) of this section, Customs may initiate a verification in order to determine whether a good imported into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA as stated on the Certificate of Origin pertaining to the good. Such a verification:

(1) May also involve a verification of the origin of a material that is used in the production of a good that is the subject of a verification under this section; and

(2) Shall be conducted only by means of one or more of the following:

(i) A verification letter which requests information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, and which identifies the good or material that is the subject of the verification. The verification letter may be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) By any other method, regardless of whether it produces proof of receipt by the exporter or producer;

(ii) A written questionnaire sent to an exporter or a producer, including a producer of a material, in Canada or Mexico. The questionnaire may be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) By any other method, regardless of whether it produces proof of receipt by the exporter or producer;

(iii) Visits to the premises of an exporter or a producer, including a producer of a material, in Canada or Mexico to review the types of records referred to in § 181.12 of this part and observe the facilities used in the production of the good or material; and

(iv) Any other method which results in information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, that is relevant to the origin determination. The information so obtained may form a basis for a negative determination regarding a good (see § 181.75(b) of this part) only if the information is in writing and is signed by the exporter or producer. In connection with an origin verification initiated under this paragraph, Customs may verify the applicable rate of duty applied to an originating good in accordance with Annex 302.2 of the NAFTA and may determine whether a good is a qualifying good for purposes of Annex 703.2 of the NAFTA.

(b) *Applicable accounting principles.* Any verification of a regional value-content requirement undertaken pursuant to paragraph (a) of this section shall be conducted in accordance with the Generally Accepted Accounting Principles applied in the country from which the good was exported to the United States.

(c) *Inquiries to importer not precluded.* Nothing in paragraph (a) of this section shall preclude Customs from directing inquiries or requests to a U.S. importer for documents or other information regarding the imported good. If such an inquiry or request involves requesting the importer to obtain and provide written information from the exporter or producer of the good or from the producer of a material that is used in the production of the good, such information shall be requested by the importer and provided to the importer by the exporter or producer only on a voluntary basis, and a failure or refusal on the part of the importer to obtain and provide such information shall not be considered a failure of the exporter or producer to provide the information and shall not constitute a ground for denying preferential tariff treatment on the good.

(d) *Failure to respond to letter or questionnaire.*

(1) *Nonresponse to initial letter or questionnaire.* If the exporter or producer, including a producer of a material, fails to respond to a verification letter or questionnaire sent under paragraph (a)(2)(i) or (a)(2)(ii) of this section within 30 calendar days from the date on which the letter

or questionnaire was sent, or such longer period as may be specified in the letter or questionnaire, Customs shall send a follow-up verification letter or questionnaire to that exporter or producer. The follow-up letter or questionnaire:

(i) Except where the verification letter or questionnaire only involved the origin of a material used in the production of a good and was sent to the producer of the material, may include the written determination referred to in § 181.75 of this part, provided that the information specified in paragraph (b) of that section is also included; and

(ii) Shall be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; or

(B) By any method, if no request under paragraph (d)(1)(ii)(A) has been made by the Canadian or Mexican customs administration.

(2) *Nonresponse to follow-up letter or questionnaire.*

(i) *Producer of a material.* If a producer of a material fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the material to be non-originating for purposes of determining whether the good to which that material relates is an originating good.

(ii) *Exporter or producer of a good.* If the exporter or producer of a good fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may deny preferential tariff treatment on the good as follows:

(A) If the follow-up letter or questionnaire included a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified therein:

(1) From the date on which the follow-up letter or questionnaire and written determination were received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(2) From the date on which the follow-up letter or questionnaire and written determination were either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section; or

(B) Provided that the procedures set forth in §§ 181.75 and 181.76 of this part are followed, if the follow-up letter or questionnaire does not include a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified in the letter or questionnaire:

(1) From the date on which the follow-up letter or questionnaire was received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(2) From the date on which the follow-up letter or questionnaire was either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section.

(e) *Calculation of regional value content under net cost method.*

(1) *General.* Where a Canadian or Mexican producer of a good elects to calculate the regional value content of a good under the net cost method as set forth in General Note 12, HTSUS, and in the appendix to this part, Customs may not, during the time period over which that net cost is calculated, conduct a verification under § 181.72(a) of this part with respect to the regional value content of that good.

(2) *Cost submission for motor vehicles.* Where, pursuant to General Note 12, HTSUS, and the appendix to this part, a Canadian or Mexican producer of a light duty vehicle or heavy duty vehicle, as defined in the appendix to this part, elects to average its regional value content calculation over its fiscal year, Customs may request, in writing, that the producer provide a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. Such a written request shall constitute a verification letter under paragraph (a)(2)(i) of this section, and the requested cost submission shall be submitted to Customs within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

§ 181.73 Notification of verification visit.

(a) *Written notification required.* Prior to conducting a verification visit, including a follow-up to an earlier visit, in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall give written notification of the intention to conduct the visit. Such notification shall be delivered:

(1) By certified or registered mail, or by any other method that produces a confirmation of receipt, to the address of the Canadian or Mexican exporter or producer whose premises are to be visited;

(2) To the customs administration of the country in which the visit is to occur; and

(3) If requested by the country in which the visit is to occur, to the embassy of that country located in the United States.

(b) *Contents of notification.* The notification referred to in paragraph (a) of this section shall include:

(1) The identity of the Customs office and officer issuing the notification;

(2) The name of the Canadian or Mexican exporter or producer of the good, or producer of the material, whose premises are to be visited;

(3) The date and place of the proposed verification visit;

(4) The object and scope of the proposed verification visit, including specific reference to the good or material that is the subject of the verification;

(5) The names and titles of the Customs officers performing the proposed verification visit;

(6) The legal authority for the proposed verification visit; and

(7) A request that the Canadian or Mexican exporter or producer of the good, or producer of the material, provide its written consent for the proposed verification visit.

§ 181.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall obtain the written consent of the Canadian or Mexican exporter or producer of the good or producer of the material whose premises are to be visited.

(b) *Written consent procedures.* The written consent provided for in paragraph (a) of this section shall be delivered by certified or registered mail, or by any other method that generates a reliable receipt, to the Customs officer who gave the notification provided for in § 181.73 of this part.

(c) *Failure to provide written consent or to cooperate or to maintain records.* Except as otherwise provided in paragraph (d) of this section, where a Canadian or Mexican exporter or producer of a good, or a Canadian or Mexican producer of a material, has not given its written consent to a proposed verification visit within 30 calendar days of receipt of notification pursuant to § 181.73 of this part, Customs may deny preferential tariff treatment to that good, or for purposes of determining whether a good is an originating good may consider as non-originating that material, that would have been the subject of the visit, provided that, as regards the good, notice of intent to deny such treatment is given to that exporter or producer of the good and to the U.S. importer thereof prior to taking such action. A failure on the part of the Canadian or Mexican exporter or producer of a good, or on the part of the Canadian or Mexican producer of a material, to maintain records or provide access to such records or otherwise cooperate during the verification visit shall mean that the verification visit never took place and may be treated by Customs in the same manner as a failure to give written consent to a verification visit. However, in the case of a Canadian or Mexican producer of a good who is found during a verification visit to have not maintained records in accordance with the Generally Accepted Accounting Principles applied in the producer's country, Customs may deny preferential tariff treatment on the good based solely on a failure to so maintain those records only if the producer does not conform the records to those Principles within 60 calendar days after Customs informs the producer in writing of that failure.

(d) *Postponement of visit in Canada or Mexico.* Following receipt of the notification provided for in § 181.73 of this part, the Canadian or Mexican customs administration may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Customs officer who issued the notification of the verification visit, unless a longer pe-

riod is requested and agreed to by Customs. Such a postponement shall not constitute a failure to provide written consent within the meaning of paragraph (c) of this section and shall not otherwise by itself constitute a valid basis upon which Customs may:

(1) Consider a material that is used in the production of a good to be a non-originating material; or

(2) Deny preferential tariff treatment to a good.

(e) *Verification visits within the United States.*

(1) *Notification and consent procedure.* When the Canadian or Mexican customs administration intends to conduct a verification visit in the United States, notification of such intent will be given, and consent will be required, as provided for under Article 506 of the NAFTA. For purposes of the required notification to Customs, such notification shall be sent to Project North Star Coordination Center, P.O. Box 400, Buffalo, New York 14225–0400.

(2) *Postponement of visit.* Following receipt of notification from the Canadian or Mexican customs administration of its intention to conduct a verification visit in the United States, Customs may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Canadian or Mexican customs administration.

(3) *Designation of observers.* A U.S. exporter or producer, including a producer of a material, whose good or material is the subject of a verification visit by the Canadian or Mexican customs administration shall be allowed to designate two observers to be present during the visit, subject to the following conditions:

(i) The U.S. exporter or producer shall not be required to designate observers;

(ii) There shall be no restriction on the class of persons that may be designated as observers by the U.S. exporter or producer;

(iii) The observers to be present are designated in the written consent to the proposed visit or subsequent thereto;

(iv) The observers do not participate in the verification visit in a manner other than as passive observers;

(v) The presence of observers shall in no way affect the right to have legal counsel or other advisors present during the visit;

(vi) There shall be no obligation on the part of the United States government or on the part of the Canadian or Mexican government to designate observers from its staff, even when the U.S. exporter or producer fails to, or specifically declines to, designate observers; and

(vii) The failure of the U.S. exporter or producer to designate observers shall not result in the postponement of the visit.

§ 181.75 Issuance of origin determination.

(a) *General.* Except in the case of a pattern of conduct within the meaning of § 181.76(b) of this part, following receipt and analysis of the results of an origin verification initiated under § 181.72(a) of this part in

regard to a good imported into the United States and prior to denying preferential tariff treatment on the import transaction which gave rise to the origin verification, Customs shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good. Subject to paragraph (b) of this section, the written origin determination shall be sent within 60 calendar days after conclusion of the origin verification process, unless circumstances require additional time, and shall set forth:

(1) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(2) Subject to the provisions of § 181.131 of this part, a statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(3) With specific reference to the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in the appendix to this part, the legal basis for the determination.

(b) *Negative origin determinations.* If Customs determines, as a result of an origin verification initiated under § 181.72(a) of this part, that the good which is the subject of the verification does not qualify as an originating good, the written determination required under paragraph (a) of this section:

(1) Shall be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; and

(2) Shall, in addition to the information specified in paragraph (a) of this section, set forth the following:

(i) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination;

(ii) The specific date after which preferential tariff treatment will be denied, as established in accordance with § 181.76(a)(1) of this part;

(iii) The period, established in accordance with § 181.76(a)(1) of this part, during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(iv) A statement advising the exporter or producer of the right to file a protest under 19 U.S.C. 1514 and part 174 of this chapter within 90 days after notice of liquidation is provided pursuant to part 159 of this chapter.

§ 181.76 Application of origin determinations.

(a) *General.* Except as otherwise provided in this paragraph or elsewhere in this section, an origin determination shall become effective upon issuance of the determination under § 181.75 of this part. In the case of a negative origin determination issued under § 181.75(b) of this part:

(1) The date on which preferential tariff treatment may be denied shall be no earlier than 30 calendar days from the date on which:

(i) Receipt of the written determination by the exporter or producer is confirmed, if a request under § 181.75(b)(1) of this part has been made; or

(ii) The written determination is sent by Customs, if no request under § 181.75(b)(1) of this part has been made; and

(2) Before denying preferential tariff treatment, Customs shall take into account any comments or additional information provided by the exporter or producer during the period established in accordance with paragraph (a)(1) of this section.

(b) *Cases involving a pattern of conduct.* Where multiple origin verifications initiated under § 181.72(a) of this part indicate a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good imported into the United States qualifies as an originating good, Customs may withhold preferential tariff treatment on identical goods exported or produced by such person until that person establishes compliance with the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in this part. For purposes of this paragraph, a "pattern of conduct" means repeated instances of false or unsupported representations by an exporter or producer as established by Customs on the basis of not fewer than two origin verifications of two or more importations of the good that result in the issuance of not fewer than two written determinations issued to that exporter or producer pursuant to § 181.75 of this part which conclude, as a finding of fact, that Certificates of Origin completed and signed by that exporter or producer with respect to identical goods contain false or unsupported representations.

(c) *Differing determinations.* Where Customs determines, either as a result of an origin verification initiated under § 181.72(a) of this part or under any other circumstance, that a certain good imported into the United States does not qualify as an originating good based on a tariff classification or a value applied in the United States to one or more materials used in the production of the good, including a material used in the production of another material that is used in the production of the good, which differs from the tariff classification or value applied to the materials by the country from which the good was exported, the Customs determination shall not become effective until Customs provides written notification thereof both to the U.S. importer of the good and to the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based.

(d) *Applicability of a determination to prior importations.* Customs shall not apply a determination made under paragraph (c) of this section to an importation made before the effective date of the determination if, prior to notification of the determination, the customs administration of the country from which the good was exported either issued an advance ruling under Article 509 of the NAFTA or any other binding ruling on

the tariff classification or on the value of such materials, or gave consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely. For purposes of this paragraph, the person who received notification of the determination shall demonstrate to the satisfaction of Customs, in writing within 30 calendar days of receipt of the notification, that the conditions set forth herein have been met. For purposes of this paragraph:

(1) A "ruling" on which a person is entitled to rely in the case of Canada must be issued pursuant to section 43.1(1) of the Customs Act (Advance Rulings) or in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) and in the case of Mexico must be issued pursuant to Article 34 of the Codigo Fiscal de la Federacion and pursuant to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the NAFTA; and

(2) "Consistent treatment" means the established application by the Canadian or Mexican customs administration that can be substantiated by the continued acceptance by the customs administration of the tariff classification or value of identical materials on importations of the materials into Canada or Mexico by the same importer over a period of not less than two years immediately prior to the date of signature of the Certificate of Origin for the good that is the subject of the determination referred to in paragraph (c) of this section, provided that with regard to those importations:

(i) The tariff classification or value of the materials was not the subject of a verification, review or appeal by that customs administration on the date of the determination under paragraph (c) of this section; and

(ii) The materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of the determination under paragraph (c) of this section.

(e) *Detrimental reliance.* If Customs denies preferential tariff treatment to a good pursuant to a determination made under paragraph (c) of this section, Customs shall postpone the effective date of the denial for a period not exceeding 90 calendar days where the U.S. importer of the good, or the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based, demonstrates to the satisfaction of Customs that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the country from which the good was exported.

SUBPART H—PENALTIES

§ 181.81 Applicability to NAFTA transactions.

(a) *General.* Except as otherwise provided in § 181.82 of this part, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the Customs and related laws and regulations shall also apply to U.S. importers, ex-

porters and producers for violations of the laws and regulations relating to the NAFTA.

(b) *False certification by U.S. exporter or producer.* Except as otherwise provided in § 181.82 of this part, a false certification by an exporter or a producer in the United States that a good to be exported to Canada or Mexico qualifies as an originating good shall have the same legal consequences as would apply to an importer in the United States for a contravention of the U.S. Customs laws and regulations regarding the making of a false statement or representation.

§ 181.82 Exceptions to application of penalties.

(a) *General.* A U.S. importer who makes a corrected declaration under § 181.21(b) of this part shall not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made. In addition, civil or administrative penalties provided for under the U.S. Customs laws and regulations shall not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 181.11(d) of this part with respect to the making of an incorrect certification.

(b) *"Voluntarily" defined.*

(1) *General.* For purposes of paragraph (a) of this section, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(i) Done before the commencement of a formal investigation;

(ii) Done before any of the events specified in § 162.74(g) of this chapter have occurred;

(iii) Done within 30 calendar days after either the U.S. importer with respect to a declaration that an imported good qualified as an originating good, or the U.S. exporter or producer with respect to a certification pertaining to a good exported to Canada or Mexico, had reason to believe that the declaration or certification was not correct;

(iv) Accompanied by a written statement setting forth the information specified in paragraph (b)(3) of this section; and

(v) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties in accordance with paragraph (b)(5) of this section.

(2) *Cases involving fraud.* Notwithstanding paragraph (b)(1) of this section, a person who acted by means of fraud in making an incorrect declaration or certification may not make a voluntary correction thereof. For purposes of this paragraph, the term "fraud" shall have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(3) *Written statement.* For purposes of paragraph (a) of this section, each corrected declaration or notification of an incorrect certification shall be accompanied by a written statement which:

(i) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(ii) Identifies each import or export transaction affected by the incorrect declaration or certification with reference to each port of importation or exportation and the approximate date of each importation or exportation. A U.S. producer who provides written notification that certain information in a Certificate of Origin is incorrect and who is unable to identify the specific export transactions under this paragraph shall provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(iii) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(iv) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30–day period as Customs may permit in order for the person to obtain the information or data.

(4) *Substantial compliance.* For purposes of this section, a person shall be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (b)(3) of this section, provided that:

(i) Customs is satisfied that the information was provided before the commencement of a formal investigation; and

(ii) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (b)(3) of this section.

(5) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration shall tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30–day period as Customs may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(6) *Applicability of prior disclosure provisions.* A person who fails to meet the requirements of this section and who otherwise qualifies for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and the regulations issued thereunder shall not be denied prior disclosure treatment merely because the disclosure is not deemed to have been made voluntarily under this section.

Subpart I—Advance Ruling Procedures

§ 181.91 Applicability.

This subpart sets forth the rules which govern the issuance and application of advance rulings under Article 509 of the NAFTA and the procedures which apply for purposes of review of advance rulings under Article 510 of the NAFTA. Importers in the United States and exporters and producers located in Canada or Mexico may request and obtain an advance ruling on a NAFTA transaction only in accordance with the

provisions of this subpart whenever the requested ruling involves a subject matter specified in § 181.92(b)(6) of this part. Accordingly, the provisions of this subpart shall apply in lieu of the administrative ruling provisions contained in subpart A of part 177 of this chapter except where the request for a ruling involves a subject matter not specified in § 181.92(b)(6).

§ 181.92 Definitions and general NAFTA advance ruling practice.

(a) *Definitions.* For purposes of this subpart:

(1) An "advance ruling" is a written statement issued by the Headquarters Office, the New York Seaport Area Office or by such other office as designated by the Commissioner of Customs that interprets and applies the provisions of NAFTA to a specific set of facts involving any subject matter specified in § 181.92(b)(6) of this part. An "advance ruling letter" is an advance ruling issued in response to a written request and set forth in a letter addressed to the person making the request or his designee. A "published advance ruling" is an advance ruling which has been published in full text in the CUSTOMS BULLETIN.

(2) An "authorized agent" is a person expressly authorized by a principal to act on his or her behalf. An advance ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before Customs as an agent in connection with an advance ruling request may be required to present evidence of his or her authority to represent the principal. The foregoing requirements will not apply to an individual representing his or her full-time employer or to a bona-fide officer, director or other qualified representative of a corporation, association, or organized group.

(3) The term "Headquarters Office," means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, DC.

(4) An "information letter" is a written statement issued by the Headquarters Office, the New York Seaport Area Office or by such other office as designated by the Commissioner of Customs that does no more than call attention to a well-established interpretation of principles under the NAFTA, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for an advance ruling when:

(i) The request suggests that general information, rather than an advance ruling, is actually being sought;

(ii) The request is incomplete or otherwise fails to meet the requirements set forth in this subpart; or

(iii) The requested advance ruling cannot be issued for any other reason.

(5) A "NAFTA transaction" is an act or activity to which the NAFTA provisions apply. A "prospective" NAFTA transaction is one that is merely contemplated or is currently being undertaken but has not resulted in any arrival or in the filing of any entry or entry summary or other document or in any other act so as to bring the transaction, or any part of it, under the jurisdiction of any Customs office. A "current" NAFTA transaction is one which is presently under consideration by a field office (port, district, or region) of Customs. A "completed" NAFTA transaction is one which has been acted upon by a Customs field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest or other review as provided in the applicable Customs laws and regulations. An "ongoing" NAFTA transaction is a series of identical, recurring transactions, consisting of current and completed transactions where future transactions are contemplated.

(6) The term "New York Seaport Area Office," means the National Import Specialist Division, Office of the Area Director, New York Seaport, United States Customs Service, New York, New York.

(b) *General Advance Ruling Practice.* An advance ruling may be requested under the provisions of this subpart with respect to prospective, current and ongoing NAFTA transactions. An advance ruling will be based on the facts and circumstances presented by the requester.

(1) *Prospective NAFTA transactions.* It is in the interest of the sound administration of the NAFTA that persons engaging in any transaction affected by NAFTA fully understand the consequences of that transaction prior to its consummation. For this reason, Customs will give full and careful consideration to written requests from importers in the United States and exporters or producers in Canada or Mexico for advance rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law or other appropriate information.

(2) *Current or ongoing NAFTA transactions.* A question arising in connection with a NAFTA transaction already before a Customs field office by reason of arrival, entry or otherwise will be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the NAFTA or the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the CUSTOMS BULLETIN, that field office may, if it believes it appropriate, forward the question to the Headquarters Office for consideration.

(3) *Completed NAFTA transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed NAFTA transaction, may not be the subject of an advance ruling request under this subpart.

(4) *Oral advice.* Customs will not issue an advance ruling in response to an oral request. Oral opinions or advice of Customs personnel are not

binding on Customs. However, oral inquiries may be made to Customs offices regarding existing advance rulings, the scope of such advance rulings, the types of transactions with respect to which Customs will issue advance rulings, the scope of the advance rulings which may be issued, or the procedures to be followed in submitting advance ruling requests, as prescribed in this subpart.

(5) *Who may request an advance ruling.* An advance ruling may be requested by any of the following persons having a direct and demonstrable interest in the question or questions presented in the advance ruling request, or by the authorized agent of any such person:

(i) An importer in the United States;

(ii) An exporter or a producer of a good in Canada or Mexico; or

(iii) A Canadian or Mexican producer of a material that is used in the production of a good imported into the United States, but only with regard to that material and only in regard to a matter described in paragraphs (b)(6)(i) through (v) and (vii) of this section.

For purposes of this paragraph, a "person" includes an individual, corporation, partnership, association, or other entity or group.

(6) *Subject matter of advance rulings.* Customs shall issue advance rulings under this subpart concerning the following:

(i) Whether materials imported from a country other than the United States, Canada or Mexico and used in the production of a good undergo an applicable change in tariff classification set forth in General Note 12, HTSUS, as a result of production occurring entirely in the United States, Canada and/or Mexico;

(ii) Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method as provided for in General Note 12, HTSUS, and in this part;

(iii) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for value to be applied by an exporter or a producer in Canada or Mexico, in accordance with the principles set forth in the appendix to this part, for calculating the transaction value of the good or of the materials used in the production of the good;

(iv) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set forth in the appendix to this part, for calculating the net cost of the good or the value of an intermediate material;

(v) Whether a good qualifies as an originating good under General Note 12, HTSUS, and under the appendix to this part;

(vi) Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment in accordance with § 181.64 of this part;

(vii) Whether the proposed or actual marking of a good satisfies country of origin marking requirements under part 134 of this chapter and under the Marking Rules;

(viii) Whether an originating good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 and Chapter Seven of the NAFTA; and

(ix) Whether a good is a qualifying good under Chapter Seven of the NAFTA.

§ 181.93 Submission of advance ruling requests.

(a) *Form.* A request for an advance ruling should be written in the English language and in the form of a letter. For any subject matter specified in § 181.92(b)(6)(i), (v), (vi), (vii), (viii) or (ix) of this part, the request may be directed either to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, or to the Area Director of Customs, New York Seaport, 6 World Trade Center, New York, NY 10048. For any subject matter specified in § 181.92(b)(6)(ii), (iii) or (iv) of this part, the request must be directed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229.

(b) *Content.*

(1) *General.* Each request for an advance ruling must contain a complete statement of all relevant facts relating to the NAFTA transaction. Such facts include: the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling.

(2) *Description of transaction.*

(i) *General.* The prospective Customs transaction to which the advance ruling request relates must be described in sufficient detail to permit proper application of the relevant NAFTA provisions.

(ii) *Tariff change rulings.* If the transaction involves the importation of a good or material for which a ruling is requested as to whether a change in tariff classification has occurred, the request must contain a complete description of the good or material, a complete description of all materials used in the production of the good or material, and a complete description of all processing operations employed in the production of the good or material. In addition, the request should set forth: the principal or chief use of the good or material in the United States and the commercial, common, or technical designation of the good or material; if the good or material is composed of two or more substances, the relative quantity (by both weight and by volume) and value of each substance; any applicable special invoicing requirements set forth in part 141 of this chapter (if known); and any other information which may assist in determining the appropriate tariff classification of the good or material. The advance ruling request should also note, whenever germane, the

purchase price of the good or material, and its approximate selling price in the United States. Each individual request for an advance ruling must be limited to five merchandise items, all of which must be of the same class or kind. Only NAFTA tariff change rulings will be issued under this subpart. Tariff classification rulings which do not involve the application of the NAFTA shall be issued under part 177 of this chapter.

(iii) *NAFTA rulings on regional value content.* NAFTA advance ruling requests, if involving the issue of whether a good satisfies a regional value content requirement under the transaction value method or under the net cost method as provided for in General Note 12, HTSUS, and in this part, must identify the method for which eligibility is sought. Where transaction value is the method identified, the information must be sufficient: to calculate the transaction value of the good, adjusted to an F.O.B. basis; to calculate the value of all non-originating materials used by the producer in the production of the good in accordance with the provisions of this part; and for any other circumstance to make any determination relevant to the application of the regional value content requirement to the good. With regard to the net cost method, the information must include: all costs relevant to determining the total cost of the good as defined in the appendix to this part; all such costs which must be subtracted from the total cost of the good as provided in the appendix to this part; the value of all materials as determined under the appendix to this part; the basis for any allocation of costs under the appendix to this part; and any other information relevant to determining the appropriate value of any cost under this part.

(3) *Samples.* Each request for an advance ruling should be accompanied by photographs, drawings, or other pictorial representations of the good and, whenever possible, by a sample of the good unless a precise description of the good is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CA number, and related information. A sample submitted in connection with a request for an advance ruling becomes a part of the Customs file in the matter and will be retained until the advance ruling is issued or the advance ruling request is otherwise disposed of. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the advance ruling request.

(4) *Related documents.* If the question or questions presented in the advance ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the advance ruling request become a part of the Customs file in the matter and cannot be returned.) The relevant facts reflected in any documents submit-

ted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the advance ruling request.

(5) *Prior or current transactions.* Each request for an advance ruling must state whether, to the knowledge of the person submitting the request, the same transaction, or one identical to it, has ever been considered, or is currently being considered by any Customs office or whether, to the knowledge of the person submitting the request, the issues involved have ever been considered, or are currently being considered, by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Where the transaction described in the advance ruling request is but one of a series of similar and related transactions, that fact must also be stated. If a prospective transaction becomes a current transaction, the office processing the ruling request shall be so notified.

(6) *Statement of position.* If the request for an advance ruling asks that a particular determination or conclusion be reached in the advance ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party) must be identified clearly, and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party), must be set forth. An advance ruling will not be issued until all trade secret, privilege or confidentiality issues are resolved (see § 181.99(a)(3) of this part).

(c) *Signing; instruction as to reply.* The request for an advance ruling must be signed by a person authorized to make the request, as described in § 181.92(b)(5) of this part. An advance ruling requested by a principal or authorized agent may direct that the advance ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* Customs will normally process requests for advance rulings in the order they are received and as expeditiously as possible, as specified in § 181.99 of this part. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram or electronic transmission will be treated in the same manner as requests made by letter, but advance rulings will not be issued by telegram or electronic transmission. A telegram or electronic transmission must be followed

up with a signed original within 14 calendar days of the submission of the telegram or electronic transmission. In no event can any assurance be given that a particular request for an advance ruling will be acted upon by the time requested.

§ 181.94 Nonconforming requests for advance rulings.

A person submitting a request for an advance ruling that does not comply with all of the provisions of this subpart will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of thirty (30) calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the advance ruling request to the requirements referred to in the notice. The Customs file with respect to advance ruling requests which are not brought into compliance with the provisions of this subpart within the period of time allowed will be administratively closed and the request removed from active consideration. A request for an advance ruling that is removed from active consideration by reason of failure to comply with the provisions of this subpart may be treated as withdrawn. A failure to comply with the provisions of this subpart will result in the rejection of the advance ruling request with the notice specifying the deficiencies.

§ 181.95 Oral discussion of issues.

(a) *General.* A person submitting a request for an advance ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the advance ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

(b) *Time, place and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in an advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other rep-

resentatives, or may designate such persons to attend the conference in his or her place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for an advance ruling to provide for inclusion in the Customs file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.

§ 181.96 Change in status of transaction.

Each person submitting a request for an advance ruling in connection with a NAFTA transaction must immediately advise Customs in writing of any change in the status of that transaction upon becoming aware of the change. In particular, Customs must be advised when any transaction described in the advance ruling request as prospective becomes current and under the jurisdiction of a Customs field office. In addition, any person engaged in a NAFTA transaction coming under the jurisdiction of a Customs field office who has previously requested a NAFTA advance ruling with respect to that transaction must advise the field office of that fact.

§ 181.97 Withdrawal of NAFTA advance ruling requests.

Any request for an advance ruling may be withdrawn by the person submitting it at any time before the issuance of an advance ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs file and will not be returned. In addition, the Headquarters Office may forward, to Customs field offices which have or may have jurisdiction over the transaction to which the advance ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs file.

§ 181.98 Situations in which no NAFTA advance ruling may be issued.

(a) *General.* No advance ruling letter will be issued in response to a request therefor which fails to comply with the provisions of this subpart. No advance ruling letter will be issued in regard to a completed transaction.

(b) *Pending matters.* Where a request for an advance ruling involves an issue that is under review in connection with an origin verification under subpart G of this part or that is the subject of an administrative review procedure provided for in subpart J of this part or in part 174 of this chapter, Customs may decline to issue the requested advance ruling. In addition, no NAFTA advance ruling letter will be issued with respect to any issue which is pending before the United States Court of

International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of an advance ruling letter, provided neither Customs nor any of its officers or agents is named as a defendant.

§ 181.99 Issuance of NAFTA advance rulings or other advice.

(a) *NAFTA advance ruling letters.*

(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, Customs will, within 120 calendar days of receipt of a request, including any required information supplemental thereto, issue an advance ruling letter in the English language setting forth the position of Customs and the reasons therefor with respect to a specifically described Customs transaction whenever a request for such an advance ruling is submitted in accordance with the provisions of this subpart and it is in the sound administration of the NAFTA provisions to do so. Otherwise, a request for an advance ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no advance ruling can be issued. In the course of evaluating the advance ruling request Customs may solicit supplemental information from the person requesting the advance ruling. The submission of supplemental information will extend the time for response. The time for response will also be extended if it is necessary to obtain information from other government agencies or in the form of a laboratory analysis.

(2) *Submission of NAFTA advance ruling letters to field offices.* Any importer engaging in a NAFTA transaction with respect to which an advance ruling letter has been issued under this subpart either must ensure that a copy of the advance ruling letter is attached to the documents filed with the appropriate Customs office in connection with that transaction or must otherwise indicate with the information filed for that transaction that an advance ruling has been received. Any person receiving an advance ruling stating Customs determination must set forth such determination in the documents or information filed in connection with any subsequent entry of that merchandise; failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. An advance ruling received after the filing of such documents or information must immediately be brought to the attention of the appropriate Customs field office.

(3) *Disclosure of NAFTA advance ruling letters.* No part of the advance ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and part 103 of this chapter, or shall be deemed to be subject to the confidentiality principle set forth in § 181.121 of this part, unless, as provided in § 181.93(b)(7) of this part, the information claimed to be exempt from disclosure is clearly identi-

fied and a valid basis for nondisclosure is set forth. Before the issuance of the advance ruling letter, the person submitting the advance ruling request will be notified of any decision adverse to his request for nondisclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the advance ruling request. If in the opinion of Customs an impasse exists on the issue of confidentiality and the person who submitted the advance ruling request does not withdraw the request, Customs will decline to issue the advance ruling. All advance ruling letters issued by Customs will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(4) *Penalties for misrepresented or omitted material facts or for noncompliance.* If Customs determines that an issued advance ruling was based on incorrect information, the person to whom the advance ruling was issued may be subject to appropriate penalties unless that person demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based. In addition, Customs may apply such measures as the circumstances may warrant in a case where a person to whom an advance ruling was issued has failed to act in accordance with the terms and conditions of the advance ruling.

(b) *Other NAFTA advice and guidance.* The Headquarters Office may on its own initiative from time to time issue other external advice and guidance with respect to issues or transactions arising under the NAFTA which come to its attention. Such NAFTA advice and guidance, which represent the official position of Customs and which are likely to be of widespread interest and application, are published in the CUSTOMS BULLETIN, as described in § 181.101 of this part. Nothing in this subpart shall preclude Customs from issuing advice and guidance to its field offices concerning the application of the NAFTA.

§ 181.100 Effect of NAFTA advance ruling letters; modification and revocation.

(a) *Effect of NAFTA advance ruling letters.*

(1) *General.* An advance ruling letter issued by Customs under the provisions of this subpart represents the official position of Customs with respect to the particular transaction or issue described therein and is binding on all Customs personnel in accordance with the provisions of this subpart until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the advance ruling set forth in the advance ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. An advance ruling letter is generally effective on the date it is issued or such later date as may be specified in the advance ruling and, commencing on its effective date, may be applied to entries for consumption and warehouse withdrawals for consumption which are unliquidated, or to other transactions with respect to which

Customs has not taken final action on that date. See, however, paragraph (b) of this section (ruling letters which modify previous advance ruling letters) and § 181.101 of this part (advance ruling letters published in the CUSTOMS BULLETIN).

(2) *Application of NAFTA rulings to transactions.*

(i) *General.* Each NAFTA ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of an advance ruling letter by a Customs field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the advance ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the advance ruling was based, and if the facts are materially different or a condition has not been satisfied, the treatment specified in the advance ruling will not be applied to the actual transaction. If, in the opinion of any Customs field office by whom the transaction is under consideration or review, the advance ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, prior to any final disposition with respect to the transaction by that office. If the transaction described in the NAFTA advance ruling letter and the actual transaction are the same, and any and all conditions set forth in the advance ruling letter have been satisfied, the advance ruling will be applied to the transaction.

(ii) *Tariff change rulings.* Each advance ruling letter concerning whether a change in tariff classification has occurred will be applied only with respect to transactions involving either articles which are identical to the sample submitted with the advance ruling request and reflect the same processing or articles which conform to the description set forth in the advance ruling letter.

(iii) *Regional value content rulings.* Each advance ruling letter concerning the application of a regional content requirement will be applied only with respect to transactions involving the same merchandise and identical facts.

(3) *Reliance on NAFTA advance rulings by others.* An advance ruling letter is subject to modification or revocation without notice to any person other than the person to whom the letter was addressed. Accordingly, no other person may rely on the advance ruling letter or assume that the principles of that advance ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request an advance ruling under § 181.92(b)(5) of this part may request information as to whether a previously-issued advance ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, and either enclosing a copy of the ad-

vance ruling letter or furnishing other information sufficient to permit the advance ruling letter in question to be identified.

(b) *Modification or revocation of NAFTA advance ruling letters.*

(1) *General.* Any NAFTA advance ruling letter may be modified or revoked:

(i) If the ruling letter reflects or is based on an error:

(A) Of fact;

(B) In the tariff classification of a good or material that is the subject of the ruling;

(C) In the application of a regional value-content requirement under General Note 12, HTSUS, and under this part;

(D) In the application of the rules for determining whether a good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 or Chapter Seven of the NAFTA;

(E) In the application of the rules for determining whether a good is a qualifying good under Chapter Seven of the NAFTA; or

(F) In the application of the rules for determining whether a good qualifies for duty-free treatment under § 181.64 of this part when the good re-enters the United States after having been exported to Canada or Mexico for repair or alteration;

(ii) If the ruling letter is not in accordance with an interpretation agreed on by the United States, Canada and Mexico regarding Chapter Three or Chapter Four of the NAFTA;

(iii) If there is a change in the material facts or circumstances on which the ruling is based;

(iv) To conform to a modification of Chapter Three, Four, Five or Seven of the NAFTA, or of the Marking Rules, or of the regulations set forth in this part; or

(v) To conform to a judicial decision or change in domestic law.

A modification or revocation of a NAFTA advance ruling letter shall be effected by Customs Headquarters by giving written notice to the person to whom the advance ruling letter was addressed.

(2) *Application of modification or revocation of NAFTA advance ruling letters.* The modification or revocation of a NAFTA advance ruling letter will not be applied to entries or warehouse withdrawals for consumption which were made prior to the effective date of such modification or revocation, except where the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

(3) *Effective dates.* Generally, a NAFTA letter modifying or revoking an earlier advance ruling will be effective on the date it is issued. However, Customs may, upon request or on its own initiative, delay the effective date of such a modification or revocation for a period of up to 90 calendar days from the date of issuance. Such a delay may be granted at the request of the party to whom the ruling letter was issued, provided such party can demonstrate to the satisfaction of Customs that it reasonably relied on the earlier advance ruling to its detriment. The evidence of reasonable reliance must cover the period from the date of the

letter modifying or revoking the advance ruling back to the date of that advance ruling and must list all transactions claimed to be covered by the modified or revoked advance ruling by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by Customs. The evidence of reliance must include contracts, purchase orders, or other materials tending to establish that future transactions were arranged based on the earlier advance ruling. The request for delay must specifically identify the prior ruling on which reliance is claimed. All persons requesting a delay will be issued a separate letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, Customs may decide to make its decision, with respect to a delay, applicable to all persons, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the CUSTOMS BULLETIN and individual ruling letters will not be issued.

§ 181.101 Publication of decisions.

Within 90 days after issuing any precedential decision relating to any NAFTA transaction, Customs shall publish the decision in the CUSTOMS BULLETIN or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1, part 103 of this chapter, and § 181.99(a)(3) of this part.

§ 181.102 Administrative and judicial review of advance rulings.

(a) *Administrative review.* Any person who received an advance ruling issued under this subpart, or an authorized agent of such person, may request administrative review, at Customs Headquarters, of that advance ruling, including any modification or revocation thereof, by letter addressed to the Director, Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229. Such request shall be filed within 30 calendar days after issuance of the advance ruling and shall set forth the following information:

(1) The name and address of the person seeking review and the name and address of his authorized agent if the request is signed by such an agent;

(2) The Customs identification number or employer identification number in the case of a U.S. importer and authorized agent thereof, the employer number or importer/exporter number assigned by Revenue Canada in the case of a Canadian exporter or producer and authorized agent thereof, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer and authorized agent thereof;

(3) The number and date of the advance ruling at issue;

(4) The numbers and dates of any involved entries for consumption or warehouse withdrawals for consumption;

(5) The nature of, and justification for, the objection to the advance ruling set forth distinctly and specifically with respect to each aspect of the advance ruling for which administrative review is sought; and

(6) Whether an oral discussion of the issues, as provided in § 181.95 of this part, is desired. Customs will normally issue a written decision within 120 days of receipt of the request for administrative review submitted under this paragraph. However, Customs will, upon a reasonable showing of business necessity, issue a written decision within 60 days of receipt of the request for administrative review. For purposes of this paragraph, the date of receipt of the request for administrative review shall be the date on which all information necessary to process the request, including any information provided after submission of the request in connection with a conference, is filed with Customs.

(b) *Judicial review.* Any person whose claims with regard to a request for administrative review of an advance ruling have been denied in whole or in part under this section may seek judicial review by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after the date of mailing of notice of the denial.

SUBPART J—REVIEW AND APPEAL OF ADVERSE MARKING DECISIONS

§ 181.111 Applicability.

This subpart sets forth the circumstances and procedures under which exporters and producers of merchandise imported into the United States may obtain information about, and administrative and judicial review of, an adverse marking decision, as provided for in Article 510 of the NAFTA. This subpart does not apply to the review of advance rulings issued under Article 509 of the NAFTA (see subpart I of this part) or to the review of determinations that a good is not an originating good under General Note 12, HTSUS, and the appendix to this part (see part 174 of this chapter).

§ 181.112 Definitions.

For purposes of this subpart, the following words and phrases have the meanings indicated:

(a) "Adverse marking decision" means a decision made by the district director which an exporter or producer of merchandise believes to be contrary to the provisions of Annex 311 of the NAFTA and which may be protested by the importer pursuant to § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter. Notification of an adverse marking decision is generally given to an importer in the form of a Customs Form 4647 (Notice to Mark and/or Notice to Redeliver) and/or by assessing marking duties on improperly marked merchandise. Examples of adverse marking decisions include determinations by the district director that: an imported article is not a good of a NAFTA country, as determined under the Marking Rules, and that it therefore cannot be marked "Canada" or "Mexico"; that a good of a NAFTA country is not marked in a manner which is sufficiently perma-

nent; and that a good of a NAFTA country does not qualify for an exception from marking specified in Annex 311 of the NAFTA. Adverse marking decisions do not include: decisions issued in response to requests for advance rulings under subpart I of this part or for internal advice under part 177 of this chapter; decisions on protests under part 174 of this chapter; and determinations that an article does not qualify as an originating good under General Note 12, HTSUS, and the appendix to this part.

(b) An "exporter" of merchandise is an exporter located in Canada or Mexico who must maintain records in that country relating to the transaction to which the adverse marking decision relates. The records must be sufficient to enable Customs to evaluate the merits of the exporter's claim(s) regarding the adverse marking decision.

(c) A "producer" of merchandise is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles such merchandise in Canada or Mexico.

§ 181.113 Request for Basis of Adverse Marking Decision.

(a) *Request; form and filing.* The exporter or producer of the merchandise which is the subject of an adverse marking decision may request a statement concerning the basis for the decision by filing a typewritten request, in English, with the district director who issued the decision. The request should be on letterhead paper in the form of a letter and clearly designated as a "Request for Basis of Adverse Marking Decision" and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(b) *Content.* The Request for Basis of Adverse Marking Decision letter shall set forth the following information:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) A statement that the inquirer is the exporter or producer of the merchandise that was the subject of the adverse marking decision;

(3) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(4) The number and date of each entry involved in the request;

(5) A specific description of the merchandise which is the subject of the adverse marking decision; and

(6) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision.

§ 181.114 Customs response to request.

(a) *Time for response.* The district director will issue a written response to the requestor within 30 days of receipt of a request containing the information specified in § 181.113 of this part. If the request is incomplete, such that the transaction in question cannot be identified, the district director will notify the requestor in writing within 30 days of receipt of the request regarding what information is needed.

(b) *Content.* The response by the district director shall include the following:

(1) A statement concerning the basis for the adverse marking decision;

(2) A copy of the relevant Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), if one was issued to the importer and is available. If the basis for the adverse marking decision is indicated on the Customs Form 4647, no statement under paragraph (b)(1) of this section is required;

(3) A statement as to whether the importer has filed a protest regarding the adverse marking decision and, if so, where the protest was filed and the protest number; and

(4) A statement concerning the exporter's or producer's right to either intervene in the importer's protest as provided in § 181.115 of this part or file a petition as provided in § 181.116 of this part.

§ 181.115 Intervention in importer's protest.

(a) *Conditional right to intervene.* An exporter or producer of merchandise does not have an independent right to protest an adverse marking decision. However, if an importer protests the adverse marking decision in accordance with § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which is the subject of the adverse marking decision may intervene in the importer's protest. Such intervention shall not affect any time limits applicable to the protest or delay action on the protest.

(b) *Form and filing of intervention.* In order to intervene in an importer's protest, as provided for in paragraph (a) of this section, the exporter or producer of the merchandise shall file, in triplicate, a typewritten statement of intervention, in English, with the district director or port director with whom the protest was filed. The statement should be on letterhead paper in the form of a letter and should be clearly designated "NAFTA Exporter or Producer Intervention in Protest". The statement shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The NAFTA Exporter or Producer Intervention in Protest letter shall include the following:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(3) The number and date of each entry involved in the adverse marking decision;

(4) A specific description of the merchandise which is the subject of the adverse marking decision;

(5) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision;

(6) A detailed statement of position regarding why the exporter or producer believes the adverse marking decision is contrary to the provisions of Annex 311 of the NAFTA;

(7) A statement as to whether a Request for Basis of Adverse Marking Decision was filed under § 181.113 of this part, and if so, the date of such Request and of any Customs response thereto issued under § 181.114 of this part. Copies of the Request and the Customs response shall be submitted, if available;

(8) The number assigned to the importer's protest;

(9) A statement that the intervenor is the exporter or producer of the merchandise that was the subject of the adverse marking decision being protested by the importer and, if the intervenor is the exporter, a statement that it maintains sufficient records to enable Customs to evaluate the merits of its claim(s) regarding the adverse marking decision; and

(10) If the intervenor prefers that the principle of confidentiality set forth in § 181.121 of this part be applied to the information submitted under this section, a statement to that effect. If no such statement is included in the letter, the intervention and information submitted in connection therewith shall be subject to the same treatment as that provided in the case of requests by all interested parties for consolidation of protests as set forth in § 174.15(b)(1) of this chapter.

(d) *Effect of Intervention.* The rights of the intervenor under this section are subordinate to the importer's protest rights. Accordingly, intervention by an exporter or producer of merchandise will not affect the procedures under part 174 of this chapter, and the importer's elections concerning accelerated disposition and application for further review of the protest will govern how the protest is handled and how the intervention is considered. If the importer withdraws or settles the protest, the exporter or producer has no right to continue the intervention action.

(e) *Action by district director.* If final administrative action has already been taken with respect to the importer's protest at the time the intervention is filed, the district director shall so advise the exporter or producer and, if the importer has filed a civil action in the Court of International Trade as a result of a denial of the protest, the district director shall advise the exporter or producer of that filing and of the exporter's

or producer's right to intervene in such judicial proceeding. If final administrative action has not been taken on the protest, the district director shall forward the intervention letter to the Customs office which has the importer's protest under review for consideration in connection with the protest.

(f) *Final disposition.* The intervenor shall be notified in writing of the final disposition of the protest. If the protest is denied in whole or in part, the intervenor shall be furnished a copy of the notice given to the importer under § 174.29.

§ 181.116 Petition regarding adverse marking decision.

(a) *Right to petition.* If the importer does not protest an adverse marking decision in accordance with § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which was the subject of the adverse marking decision may file a petition with Customs requesting reconsideration of the decision. The petition may not be filed until after the importer's time to protest the adverse marking decision has expired (see § 174.12(e) of this chapter for the time limits for filing protests). If the importer filed a protest upon which final administrative action has been taken, the exporter or producer may file a petition under this section, provided that the exporter or producer was not given notice of the pending protest pursuant to § 181.114 of this part. If the importer filed a protest on which final administrative action has not been taken and notice of the pending protest was not provided to the exporter or producer under § 181.114 of this part, a petition filed under this section shall be treated by the district director as an intervention under § 181.115 of this part.

(b) *Form and filing of petition.* A petition under this section shall be typewritten, in English, and shall be filed, in triplicate, with the district director who issued the adverse marking decision. The petition under this subpart should be on letterhead paper in the form of a letter, clearly designated as a "Petition for NAFTA Review of Adverse Marking Decision" and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The Petition for NAFTA Review of Adverse Marking Decision letter shall contain all the information specified § 181.115 of this part, except for the protest number. It shall also include a statement that petitioner was not notified by Customs in writing of a pending protest.

(d) *Review of petition.*

(1) *Review by district director.* Within 60 days of the date of receipt of the petition, the district director shall determine if the petition is to be granted or denied, in whole or in part. If, after reviewing the petition, the district director agrees with all of the petitioner's claims and determines that the initial adverse marking decision was not correct, a written notice granting the petition shall be issued to the petitioner. A description of the merchandise, a brief summary of the issue(s) and the

district director's findings shall be forwarded to the Director, Commercial Rulings Division, Customs Headquarters, for publication in the CUSTOMS BULLETIN. If, after reviewing the petition, the district director determines that the initial adverse marking decision was correct in its entirety, a written notice shall be issued to the petitioner advising that the matter has been forwarded to the Director, Commercial Rulings Division, Customs Headquarters, for further review and decision. All relevant background information, including available samples, a description of the adverse marking decision and the reasons for the decision, and the district director's recommendation shall be furnished to Headquarters.

(2) *Review by Headquarters.* Within 120 days of the date the petition and background information are received at Customs Headquarters, the Director, Commercial Rulings Division, shall determine if the petition is to be granted or denied, in whole or in part, and the petitioner shall be notified in writing of the determination. If the petition is granted in whole or in part, a description of the merchandise, a brief summary of the issue(s) and the director's findings will be published in the CUSTOMS BULLETIN.

(3) *Effect of granting the petition.* The decision on the petition, if contrary to the initial adverse marking decision, will be implemented with respect to merchandise entered or withdrawn from warehouse for consumption after 30 days from the date on which the notice of determination is published in the CUSTOMS BULLETIN.

(f) *Pending litigation.* No decision on a petition will be issued under this section with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a decision on a petition under this section, provided neither Customs nor any of its officers or agents is named as a defendant.

(g) *Judicial review of denial of petition.*

Any person whose petition under this section has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade within 30 days after the date of mailing of the notice of denial.

SUBPART K—CONFIDENTIALITY OF BUSINESS INFORMATION

§ 181.121 Maintenance of confidentiality.

The district director or other Customs officer who has possession of confidential business information collected pursuant to this part shall, in accordance with part 103 of this chapter, maintain its confidentiality and protect it from any disclosure that could prejudice the competitive position of the persons providing the information.

§ 181.122 Disclosure to government authorities.

Nothing in § 181.121 of this part shall preclude the disclosure of confidential business information to governmental authorities in the United

States responsible for the administration and enforcement of determinations of origin and of customs and revenue matters.

SUBPART L—RULES OF ORIGIN

§ 181.131 Rules of origin.

The regulations implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA are contained in the appendix to this part.

APPENDIX—RULES OF ORIGIN REGULATIONS

SECTION 1.—CITATION

This Appendix may be cited as the *NAFTA Rules of Origin Regulations.*

PART I

SECTION 2.—DEFINITIONS AND INTERPRETATION

DEFINITIONS

(1) For purposes of this Appendix,

"accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools" means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for consumable or interchangeable parts of that good;

"adjusted to an F.O.B. basis" means, with respect to a good, adjusted by

(a) deducting

(i) the costs of transporting the good after it is shipped from the point of direct shipment,

(ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and

(iii) the cost of packing materials and containers,

where those costs are included in the transaction value of the good, and

(b) adding

(i) the costs of transporting the good from the place of production to the point of direct shipment,

(ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) the costs of loading the good for shipment at the point of direct shipment,

where those costs are not included in the transaction value of the good;

"Agreement" means the *North American Free Trade Agreement;*

"applicable change in tariff classification" means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule set out in Schedule I for the tariff provision under which the good is classified;

"automotive component" means a good that is referred to in column I of an item of Schedule V;

"automotive component assembly" means a good, other than a heavy-duty vehicle, that incorporates an automotive component;

"costs incurred in packing" means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

"customs value" means

(a) in the case of Canada, value for duty as defined in the *Customs Act,* except that for purposes of determining that value the reference in section 55 of that Act to "in accordance with the regulations made under the *Currency Act*" shall be read as a reference to "in accordance with subsection 3(1) of these Regulations",

(b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera*, converted, in the event such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations, and

(c) in the case of the United States, the value of imported merchandise as determined by the Customs Service in accordance with section 402 of the *Tariff Act of 1930,* converted, in the event such value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations.

"days" means calendar days, and includes weekends and holidays;

"direct labor costs" means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;

"direct material costs" means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;

"direct overhead" means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;

"enterprise" means any entity constituted or organized under applicable laws, whether or not for profit and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

"excluded costs" means sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;

"fungible goods" means goods that are interchangeable for commercial purposes and the properties of which are essentially identical;

"fungible materials" means materials that are interchangeable for commercial purposes and the properties of which are essentially identical;

"Harmonized System" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as set out in

(a) in the case of Canada, the *Customs Tariff,*
(b) in the case of Mexico, the *Tarifa de la Ley del Impuesto General de Importacion,* and
(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

"heavy-duty vehicle" means a motor vehicle provided for in any of heading 8701, tariff items 8702.10.30 and 8702.10.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and heading 8705 and 8706;

"identical goods" means, with respect to a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,
(b) were produced in the same country as that good, and
(c) were produced
(i) by the producer of that good, or
(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

"identical materials" means, with respect to a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,
(b) were produced in the same country as that material, and
(c) were produced
(i) by the producer of that material, or
(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

"incorporated" means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;

"indirect material" means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, and includes

(a) fuel and energy,
(b) tools, dies and molds,
(c) spare parts and materials used in the maintenance of equipment and buildings,
(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings,
(e) gloves, glasses, footwear, clothing, safety equipment and supplies,
(f) equipment, devices and supplies used for testing or inspecting the other goods,
(g) catalysts and solvents, and
(h) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production;

"interest costs" means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

"intermediate material" means a self-produced material that is used in the production of a good and is designated as an intermediate material under section 7(4);

"light-duty automotive good" means a light-duty vehicle or a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use as original equipment in the production of a light-duty vehicle;

"light-duty vehicle" means a motor vehicle provided for in any of tariff items 8702.10.60 and 8702.10.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8703.21 through 8703.90, 8704.21 and 8704.31

"listed material" means a good that is referred to in column II of an item of Schedule V;

"location of the producer" means,

(a) where the warehouse or other receiving station at which a producer receives materials for use by the producer in the production of a good is located within a radius of 75 km (46.60 miles) from the place at which the producer produces the good, the location of that warehouse or other receiving station, and
(b) in any other case, the place at which the producer produces the good in which a material is to be used;

"material" means a good that is used in the production of another good, and includes a part or ingredient;

"motor vehicle assembler" means a producer of motor vehicles and any related person with whom, or joint venture in which, the producer participates with respect to the production of motor vehicles;

"month" means a calendar month;

"NAFTA country" means a Party to the Agreement;

"national" means a natural person who is a citizen or permanent resident of a NAFTA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a "national of the United States" as defined in the *Immigration and Nationality Act* on the date of entry into force of the Agreement;

"net cost method" means the method of calculating the regional value content of a good that is set out in section 6(3);

"non-allowable interest costs" means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located;

"non-originating good" means a good that does not qualify as originating under this Appendix;

"non-originating material" means a material that does not qualify as originating under this Appendix;

"original equipment" means a material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not a motor vehicle assembler, and that is

(a) a good of a tariff provision listed in Schedule IV, or

(b) an automotive component assembly, automotive component, sub-component or listed material;

"originating good" means a good that qualifies as originating under this Appendix;

"originating material" means a material that qualifies as originating under this Appendix;

"other costs," with respect to total cost, means all costs that are not product costs or period costs;

"packaging materials and containers" means materials and containers in which a good is packaged for retail sale;

"packing materials and containers" means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

"payments" means, with respect to royalties and sales promotion, marketing and after-sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

"period costs" means costs, other than product costs, that are expensed in the period in which they are incurred;

"person" means a natural person or an enterprise;

"person of a NAFTA country" means a national, or an enterprise constituted or organized under the laws of a NAFTA country;

"point of direct shipment" means the location from which a producer of a good normally ships that good to the buyer of the good;

"producer" means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

"product costs" means costs that are associated with the production of a good, and includes the value of materials, direct labor costs and direct overhead;

"production" means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

"related person" means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,
(b) they are legally recognized partners in business,
(c) they are employer and employee,
(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,
(e) one of them directly or indirectly controls the other,
(f) both of them are directly or indirectly controlled by a third person, or
(g) they are members of the same family (members of the same family are natural or adopted children, brothers, sisters, parents, grandparents, or spouses);

"reusable scrap or by-product" means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

"right to use," for purposes of the definition of royalties, includes the right to sell or distribute a good;

"royalties" means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where performed, and
(b) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

"sales promotion, marketing and after-sales service costs" means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

"self-produced material" means a material that is produced by the producer of a good and used in the production of that good;

"shipping and packing costs" means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

"similar goods" means, with respect to a good, goods that

(a) although not alike in all respects to that good, have similar characteristics and component materials, that enable the goods to perform the same functions and to be commercially interchangeable with that good,
(b) were produced in the same country as that good, and
(c) were produced
(i) by the producer of that good, or
(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

"similar materials" means, with respect to a material, materials that

(a) although not alike in all respects to that material, have similar characteristics and component materials, that enable the materials to perform the same functions and to be commercially interchangeable with that material,
(b) were produced in the same country as that material, and
(c) were produced
(i) by the producer of that material, or
(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

"subject to a regional value-content requirement" means, with respect to a good, that the provisions of this Appendix that are applied to determine whether the good is an originating good include a regional value-content requirement;

"sub-component" means a good that comprises a listed material and one or more other materials or listed materials;

"tariff provision" means a heading, subheading or tariff item;

"territory" means, with respect to

(a) Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources,
(b) Mexico,
(i)the states of the Federation and the Federal District,
(ii) the islands, including the reefs and keys, in adjacent seas,
(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,
(iv) the continental shelf and the submarine shelf of such islands, keys and reefs,
(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters,
(vi) the space located above the national territory, in accordance with international law, and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the *United Nations Convention on the Law of the Sea,* and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, and

(c) the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

"total cost" means the total of all product costs, period costs and other costs incurred in the territory of one or more of the NAFTA countries;

"transaction value method" means the method of calculating the regional value content of a good that is set out in subsection 6(2);

"used" means used or consumed in the production of a good;

"verification of origin" means a verification of origin of goods under

(a) in the case of Canada, paragraph 42.1(1)(a) or subsection 42.2(2) of the *Customs Act,*

(b) in the case of Mexico, Article 506 of the Agreement, and

(c) in the case of the United States, section 509 of the *Tariff Act of 1930, as amended.*

Interpretation: "similar":

(2) For purposes of the definitions of "similar goods" and "similar materials," the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for purposes of determining whether goods or materials are similar.

Interpretation: terms used to refer to HTSUS; use of term "books":

(3) For purposes of this Appendix,

(a) "chapter," unless otherwise indicated, refers to a chapter of the Harmonized System;

(b) "heading" refers to any four-digit number, or the first four digits of any number, set out in the column "Heading/Subheading" in the Harmonized System;

(c) "subheading" refers to any six-digit number, or the first six digits of any number, set out in the column "Heading/Subheading" in the Harmonized System;

(d) "tariff item" refers to any eight-digit number set out in the column "Heading/Subheading" in the Harmonized System;

(e) any reference to a tariff item in Chapter Four of the Agreement or this Appendix that includes letters shall be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each NAFTA country; and

(f) "books" refers to,

(i) with respect to the books of a person who is located in a NAFTA country,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule VI with respect to the territory of the NAFTA country in which the person is located, and

(B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule VI with respect to the territory of the NAFTA country in which the person is located, and

(ii) with respect to the books of a person who is located outside the territories of the NAFTA countries,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards, and

(B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards.

USE OF EXAMPLES TO ILLUSTRATE THE APPLICATION OF A PROVISION

(4) Where an example, referred to as an "Example," is set out in this Appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

(5) Except as otherwise provided, references in this Appendix to domestic laws of the NAFTA countries apply to those laws as they may be amended or superseded.

SECTION 3.—CURRENCY CONVERSION

(1) Where the value of a good or a material is expressed in a currency other than the currency of the country in which the producer of the good is located, that value shall be converted to the currency of the country in which that producer is located on the basis of

(a) in the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for purposes of recording that sale or purchase, as the case may be, and

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording another transaction in that other currency that oc-

curred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in *the Diario Oficial de la Federacion,* under the title *"TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana",* for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) Where a producer of a good has a statement referred to in section 9, 10 or 14 that includes information in a currency other than the currency of the country in which that producer is located, the currency shall be converted to the currency of the country in which the producer is located on the basis of

(a) if the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange used by the producer for purposes of recording the purchase,

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in *the Diario Oficial de la Federacion,* under the title *"TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana",* for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151

for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in *the Diario Oficial de la Federacion,* under the title *"TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana",* for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

PART II

SECTION 4.–ORIGINATING GOODS

Identification of goods which are "wholly obtained or produced":

(1) A good originates in the territory of a NAFTA country where the good is

(a) a mineral good extracted in the territory of one or more of the NAFTA countries;

(b) a vegetable or other good harvested in the territory of one or more of the NAFTA countries;

(c) a live animal born and raised in the territory of one or more of the NAFTA countries;

(d) a good obtained from hunting, trapping or fishing in the territory of one or more of the NAFTA countries;

(e) fish, shellfish or other marine life taken from the sea by a vessel registered or recorded with a NAFTA country and flying its flag;

(f) a good produced on board a factory ship from a good referred to in paragraph (e), where the factory ship is registered or recorded with the same NAFTA country as the vessel that took that good and flies that country's flag;

(g) a good taken by a NAFTA country or a person of a NAFTA country from or beneath the seabed outside the territorial waters of that country, where a NAFTA country has the right to exploit that seabed;

(h) a good taken from outer space, where the good is obtained by a NAFTA country or a person of a NAFTA country and is not processed outside the territories of the NAFTA countries;

(i) waste and scrap derived from

(i) production in the territory of one or more of the NAFTA countries, or

(ii) used goods collected in the territory of one or more of the NAFTA countries, where those goods are fit only for the recovery of raw materials; or

(j) a good produced in the territory of one or more of the NAFTA countries exclusively from a good referred to in any of paragraphs (a) through (i), or from the derivatives of such a good, at any stage of production.

Goods made from non-originating materials: change in tariff classification requirement; regional value-content requirement:

(2) A good originates in the territory of a NAFTA country where

(a) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a change in tariff classification, and the good satisfies all other applicable requirements of this Appendix;

(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries and the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies both a change in tariff classification and a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix; or

(c) the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix.

Goods made exclusively from originating materials:

(3) A good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

Exceptions to the change in tariff classification requirement:

(4) A good originates in the territory of a NAFTA country where

(a) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in

tariff classification because the materials were imported together, whether or not with originating materials, into the territory of a NAFTA country as an unassembled or disassembled good, and were classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System,

(iii) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(iv) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I; or

(b) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because

(A) those materials are provided for under the Harmonized System as parts of the good, and

(B) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts,

(iii) the non-originating materials that do not undergo a change in tariff classification in the circumstances described in subparagraph (ii) and the good are not both classified as parts of goods under the heading or subheading referred to in subparagraph (ii)(B),

(iv) each of the non-originating materials that is used in the production of the good and is not referred to in subparagraph (iii) undergoes an applicable change in tariff classification or satisfies any other applicable requirement set out in Schedule I,

(v) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(vi) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I.

Interpretation: heading or subheading which provides for both a good and parts of the good:

(5) For purposes of subsection (4)(b),

(a) the determination of whether a heading or subheading provides for a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section

or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) where, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated "Parts", a subheading designated "Other" under that heading shall be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) For purposes of subsection (2), where Schedule I sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

Special rule for certain goods:

(7) A good originates in the territory of a NAFTA country if the good is referred to in Section B of Table 308.1.1 of Annex 308.1 to Chapter Three of the Agreement and is imported from the territory of a NAFTA country at a time when the NAFTA countries' most-favored-nation rate of duty for that good is in accordance with paragraph 1 of Section A of that Annex.

SECTION 5.—DE MINIMIS

De minimis rule for non-originating materials that do not undergo a required tariff change:

(1) Except as otherwise provided in subsection (4), a good shall be considered to originate in the territory of a NAFTA country where the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries is not more than seven percent

(a) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(b) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule,

provided that,

(c) if, under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement, the value of those non-originating materials shall be taken into account in calculating the regional value content of the good in accordance with the method set out for that good, and

(d) the good satisfies all other applicable requirements of this Appendix.

(2) For purposes of subsection (1), where

(a) Schedule I sets out two or more alternative rules for the tariff provision under which the good is classified, and

(b) the good, in accordance with subsection (1), is considered to originate under one of those rules,

the good is not required to satisfy the requirements specified in any alternative rule referred to in paragraph (a).

(3) For purposes of subsection (1), in the case of a good that is provided for in heading 2402, the percentage shall be nine percent instead of seven percent.

Exceptions:

(4) Subsections (1) and (2) do not apply to

(a) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4;

(b) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in any of tariff items 1901.10.10 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.10 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids), heading 2105 and tariff items 2106.90.05, 2106.90.13, 2106.90.41, 2106.90.51 and 2106.90.61 (preparations containing over 10 percent by weight of milk solids), 2202.90.10 and 2202.90.20 (beverages containing milk) and 2309.90.31 (animal feeds containing over 10 percent by weight of milk solids);

(c) a non-originating material provided for in any of heading 0805 and subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.30 and tariff items 2106.90.16 and 2106.90.17 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) and 2202.90.30, 2202.90.35 and 2202.90.36 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

(d) a non-originating material provided for in Chapter 9 that is used in the production of a good provided for in tariff item 2101.10.21 (instant coffee, not flavored);

(e) a non-originating material provided for in Chapter 15 that is used in the production of a good provided for in any of headings 1501 through 1508, 1512, 1514 and 1515;

(f) a non-originating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703;

(g) a non-originating material provided for in Chapter 17 or heading 1805 that is used in the production of a good provided for in subheading 1806.10;

(h) a non-originating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in any of headings 2207 through 2208;

(i) a non-originating material that is used in the production of a good provided for in any of tariff item 7321.11.30 (gas stove or range), subheadings 8415.10, 8415.81 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 and 8451.21 through 8451.29, Mexican tariff item 8479.82.03 (trash compactors) or Canadian or U.S. tariff item 8479.89.55 (trash compactors), and tariff item 8516.60.40 (electric stove or range);

(j) a printed circuit assembly that is a non-originating material used in the production of a good, where the applicable change in tariff classification for the good places restrictions on the use of that non-originating material, such as by prohibiting, or limiting the quantity of, that non-originating material;

(k) a non-originating material that is a single juice ingredient provided for in heading 2009 that is used in the production of a good provided for in any of subheading 2009.90 and tariff items 2106.90.18 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) and 2202.90.37 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins);

(l) a non-originating material that is used in the production of a good provided for in any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or

(m) a non-originating material that is used in the production of a good provided for in any of Chapters 50 through 63.

De minimis rule for regional value-content requirement:

(5) A good that is subject to a regional value-content requirement shall be considered to originate in the territory of a NAFTA country and shall not be required to satisfy that requirement where

(a) the value of all non-originating materials used in the production of the good is not more than seven percent

(i) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(ii) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule; and

(b) the good satisfies all other applicable requirements of this Appendix.

De minimis rule for textile goods:

(6) A good provided for in any of Chapters 50 to 63, that does not originate in the territory of a NAFTA country because certain fibers or yarns that are used in the production of the component of the good that deter-

mines the tariff classification of the good do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries, shall be considered to originate in the territory of a NAFTA country if

(a) the total weight of all those fibers or yarns is not more than seven percent of the total weight of that component; and

(b) the good satisfies all other applicable requirements of this Appendix.

(7) For purposes of subsection (6),

(a) the component of a good that determines the tariff classification of that good shall be identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) where the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component shall be taken into account in determining the weight of fibers and yarns in that component.

Calculation of "total cost" for de minimis rules: choice of methods:

(8) For purposes of subsection (1)(b) and subsection (5)(a)(ii), the total cost of a good shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to that good in accordance with Schedule VII; or

(b) the aggregate of each cost, calculated on the basis of the costs that are recorded on the books of the producer, that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule VII.

Examples illustrating de minimis rules:

(9) Each of the following examples is an "Example" as referred to in section 2(4).

EXAMPLE 1

Section 5(1):

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of copper anodes provided for in heading 7402. The rule set out in Schedule I for heading 7402 specifies a change in tariff classification from any other chapter. There is no applicable regional value-content requirement for this heading. Therefore, in order for the copper anode to qualify as an originating good under the rule set out in Schedule I, Producer A may not use in the production of the copper anode any non-originating material provided for in Chapter 74.

All of the materials used in the production of the copper anode are originating materials, with the exception of a small amount of copper

scrap provided for in heading 7404, that is in the same chapter as the copper anode. Under section 5(1), if the value of the non-originating copper scrap does not exceed seven percent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable, the copper anode would be considered an originating good.

EXAMPLE 2

Section 5(2):

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of ceiling fans provided for in subheading 8414.51. There are two alternative rules set out in Schedule I for subheading 8414.51, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the ceiling fans are classified and a regional value-content requirement. Therefore, in order for the ceiling fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of ceiling fans and used in the production of the completed ceiling fan must be originating materials.

In this case, all of the non-originating materials used in the production of the ceiling fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of ceiling fans. Under section 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed seven percent of the transaction value of the ceiling fan or the total cost of the ceiling fan, whichever is applicable, the ceiling fan would be considered an originating good. Therefore, under section 5(2), the ceiling fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value-content requirement.

EXAMPLE 3

Section 5(2):

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of plastic bags provided for in subheading 3923.29. The rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification from any other heading, except from subheadings 3920.20 or 3920.71, under which certain plastic materials are classified, and a regional value-content requirement. Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the plastic bag to qualify as an originating good, any plastic materials that are classified under subheading 3920.20 or 3920.71 and that are used in the production of the plastic bag must be originating materials.

In this case, all of the non-originating materials used in the production of the plastic bag satisfy the specified change in tariff classification, with the exception of a small amount of plastic materials classified under subheading 3920.71. Section 5(1) provides that the plastic bag can be considered an originating good if the value of the non-originating plastic materials that do not satisfy the specified change in tariff classification does not exceed seven percent of the transaction value of the plastic bag or the total cost of the plastic bag, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the seven percent limit.

However, the rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification and a regional value-content requirement. Therefore, under section 5(1)(c), in order to be considered an originating good, the plastic bag must also, except as otherwise provided in section 5(5), satisfy the regional value-content requirement specified in that rule. As provided in section 5(1)(c), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the plastic bag, will be taken into account in calculating the regional value content of the plastic bag.

EXAMPLE 4

Section 5(5):

Producer A, located in a NAFTA country, primarily uses originating materials in the production of shoes provided for in heading 6405. The rule set out in Schedule I for heading 6405 specifies both a change in tariff classification from any subheading other than subheadings 6401.10 through 6406.10 and a regional value-content requirement.

With the exception of a small amount of materials provided for in Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under section 5(5), if the value of all of the non-originating materials used in the production of the shoes does not exceed seven percent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value-content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

EXAMPLE 5

Section 5(5):

Producer A, located in a NAFTA country, produces barbers' chairs provided for in subheading 9402.10. The rule set out in Schedule I for goods provided for in heading 9402 specifies a change in tariff classification from any other chapter. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification be-

cause subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, section 4(4)(b) provides, among other things, that, where there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods shall qualify as originating goods if they satisfy a specified regional value-content requirement.

However, under section 5(5), if the value of the non-originating materials does not exceed seven percent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value-content requirement set out in section 4(4)(b)(v).

EXAMPLE 6

Sections 5(6) and (7):

Producer A, located in a NAFTA country, produces women's dresses provided for in subheading 6204.41 from fine wool fabric of heading 5112. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The rule set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the NAFTA countries.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under section 5(6), if the total weight of the non-originating combed wool yarn does not exceed seven percent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

PART III

SECTION 6. – REGIONAL VALUE CONTENT

(1) Except as otherwise provided in subsection (6), the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

TRANSACTION VALUE METHOD

(2) The transaction value method for calculating the regional value content of a good is as follows:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 7.

NET COST METHOD

(3) The net cost method for calculating the regional value content of a good is as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

NC is the net cost of the good, calculated in accordance with subsection (11); and

VNM is the value of non-originating materials used by the producer in the production of the good, determined, except as otherwise provided in sections 9 and 10, in accordance with section 7.

VNM does not include value of non-originating materials used in originating material:

(4) Except as otherwise provided in section 9 and section 10(1)(d), for purposes of calculating the regional value content of a good under

subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good shall not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) For purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-originating materials used in the production of the self-produced material shall be included in the value of non-originating materials used in the production of the good; and

(b) where a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials shall be included in the value of non-originating materials.

Net cost method required in certain circumstances:

(6) The regional value content of a good shall be calculated only on the basis of the net cost method where

(a) there is no transaction value for the good under section 2(1) of Schedule III;

(b) the transaction value of the good is unacceptable under section 2(2) of Schedule III;

(c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales by that producer of identical goods or similar goods, or any combination thereof, to related persons during the six month period immediately preceding the month in which the goods are sold exceeds 85 percent of the producer's total sales of identical goods or similar goods, or any combination thereof, during that period;

(d) the good is

(i) a motor vehicle provided for in any of headings 8701 and 8702, subheadings 8703.21 through 8703.90 and headings 8704, 8705 and 8706,

(ii) a good provided for in a tariff provision listed in Schedule IV or an automotive component assembly, automotive component, sub-component or listed material, and is for use in a motor vehicle referred to in subparagraph (i), either as original equipment or as an after-market part,

(iii) a good provided for in any of subheadings 6401.10 through 6406.10, or

(iv) a good provided for in tariff item 8469.10.40 (word processing machines);

(e) the exporter or producer chooses to accumulate with respect to the good in accordance with section 14; or

(f) the good is an intermediate material and is subject to a regional value-content requirement.

Option to change from TVM to NCM for calculation of regional value content:

(7) If the exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the exporter or producer, is required to be adjusted under section 4 of Schedule II or is unacceptable under section 2(2) of Schedule III, there is no transaction value for the good under section 2(1) of Schedule III or the transaction value method may not be used because of the application of subsection (6)(c), or

(b) the value of any non-originating material used in the production of the good, as determined by the exporter or producer, is required to be adjusted under section 5 of Schedule VIII or is unacceptable under section 2(3) of Schedule VIII, or there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value method may not be used to calculate the regional value content of the material because of the application of subsection (6)(c),

the exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 60 days after the producer receives the notification, or such longer period as that customs administration specifies.

Change from NCM to TVM not permitted:

(8) If the exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value-content requirement, the exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) Nothing in subsection (7) shall be construed as preventing any review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

Application of Schedule IX for determining value of "identical" non-originating materials under TVM:

(10) For purposes of the transaction value method, where non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule IX.

Options for calculating the net cost of a good:

(11) For purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule VII, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule VII, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule VII, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

Calculation of total cost:

(12) For purposes of subsection (11),

(a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in paragraphs (b)(i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;

(b) in calculating total cost,

(i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, shall be the value determined in accordance with section 7(1),

(ii) the value of intermediate materials shall be determined in accordance with section 7(9),

(iii) the value of indirect materials and the value of packing materials and containers shall be the costs that are recorded on the books of the producer for those materials, and

(iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) through (iii), shall be the costs thereof that are recorded on the books of the producer for those costs;

(c) total cost does not include profits that are earned by the producer of the good, regardless of whether they are retained by the

producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(d) gains related to currency conversion that are related to the production of the goods shall be deducted from total cost, and losses related to currency conversion that are related to the production of the goods shall be included in total cost; and

(e) the value of materials with respect to which production is accumulated under section 14 shall be determined in accordance with that section.

Calculation of net cost; excluded costs:

(13) For purposes of calculating net cost under subsection (11),

(a) excluded costs shall be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good shall not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a NAFTA country.

Non-allowable interest; determination under Schedule XI:

(14) For purposes of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located shall be made in accordance with Schedule XI.

Use of "averaging" over a period to calculate RVC under NCM; period cannot be changed:

(15) For purposes of the net cost method, except where a producer chooses to calculate the regional value content of a good under section 11(1), (3) or (6), 12(1) or 13(4), the regional value content of the good may, where the producer of the goods chooses to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

(i) a month,

(ii) any three month or six month period that falls within the producer's fiscal year, or

(iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) The calculation made under subsection (15) shall apply with respect to all units of the good produced during the period chosen by the producer under subsection (15)(a).

(17) A choice made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

Obligation to perform self-analysis and give notification of changed circumstance if RVC calculated on basis of estimated costs:

(18) Except as otherwise provided in sections 11(10), 12(7) and 13(10), where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen in subsection (14)(a), the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value-content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

Option to treat any material as non-originating:

(19) For purposes of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

Examples of calculation of RVC under TVM and NCM:

(20) Each of the following examples is an "Example" as referred to in section 2(4).

EXAMPLE 1

Example of point of direct shipment (with respect to adjusted to an F.O.B. basis):

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

EXAMPLE 2

Examples of point of direct shipment (with respect to adjusted to an F.O.B. basis):

A producer has six factories, all located within the territory of one of the NAFTA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are

shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

EXAMPLE 3

Examples of point of direct shipment (with respect to adjusted to an F.O.B. basis):

A producer has only one factory, located near the center of one of the NAFTA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

EXAMPLE 4

Section 6(3), net cost method:

A producer located in NAFTA country A sells Good A that is subject to a regional value-content requirement to a buyer located in NAFTA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of this Appendix, other than the regional value-content requirement, have been met. The applicable regional value-content requirement is 50 percent.

In order to calculate the regional value-content of Good A, the producer first calculates the net cost of Good A. Under section 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

Product costs:	
Value of originating materials	$30.00
Value of non-originating materials	40.00
Other product costs	20.00
Period costs	10.00
Other costs	0.00
Total cost of Good A, per unit	100.00

Excluded costs:

Sales promotion, marketing and after-sales service cost	$5.00
Royalties	2.50
Shipping and packing costs	3.00
Non-allowable interest costs	1.50
Total excluded costs	12.00

The net cost is the total cost of Good A, per unit, minus the excluded costs.

Total cost of Good A per unit	$100.00
Excluded costs	– 12.00
Net cost of Good A, per unit	88.00

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{88 - 40}{88} \times 100$$

$$= 54.5\%$$

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value-content of 54.5 percent.

EXAMPLE 5

Section 6(6)(c), net cost method required for certain sales to related persons:

On January 15, 1994, a producer located in NAFTA country A sells 1,000 units of Good A to a related person, located in NAFTA country B. During the six month period beginning on July 1, 1993 and ending on December 31, 1993, the producer sold 90,000 units of identical goods and similar goods to related persons from various countries, including that buyer. The producer's total sales of those identical goods and similar goods to all persons from all countries during that six month period were 100,000 units.

The total quantity of identical goods and similar goods sold by the producer to related persons during that six month period was 90 percent of the producer's total sales of those identical goods and similar goods to all persons. Under section 6(6)(c), the producer must use the net cost method to calculate the regional value content of Good A sold in January 1994, because the 85 percent limit was exceeded.

EXAMPLE 6

Section 6(11)(a):

A producer in a NAFTA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	9,000

The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods.

Total cost of Good A and Good B	$9,000
Excluded costs	-1,200
Net cost of Good A and Good B	7,800

The net cost must then be reasonably allocated, in accordance with Schedule VII, to Good A and Good B.

EXAMPLE 7

Section 6(11)(b):

A producer located in a NAFTA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs (including $ 1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	9,000

Under section 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

	Allocated to Good A	Allocated to Good B
Total cost ($9,000 for both Good A and Good B)	$5,220	$3,780

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

		Excluded cost allocated to Good A	Excluded cost allocated to Good B
Total excluded costs:			
Sales promotion, marketing and after-sale service costs	$500	$290	$210
Royalties	200	116	84
Shipping and packing costs	500	290	210
Net cost (total cost minus excluded costs)		4,524	3,276

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

EXAMPLE 8

Section 6(11)(c):

A producer located in a NAFTA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

	Total cost (in thousands of dollars)		
	Good C and Good D	Allocated to Good C	Allocated to Good D
Product costs:			
Value of originating materials	100	0	100
Value of non-originating materials	900	800	100
Other product costs	500	300	200
Period costs (including $420 in excluded costs)	5,679	3,036	2,643
Minus excluded costs	420	300	120
Other costs	0	0	0
Total cost (aggregate of product costs, period costs and other costs)	6,759	3,836	2,923

EXAMPLE 9

Section 6(12)(a):

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country. Material X is a non-originating material and is used in the production of Good A. Producer A provides Producer B, at no charge, with tools to be used in the production of Material X. The cost of the tools that is recorded on the books of Producer A has been expensed in the current year. Pursuant to section 5(1)(b)(ii) of Schedule VIII, the value of the tools is included in the value of Material X. Therefore, the cost of the tools that is recorded on the books of Producer A and that has been expensed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

EXAMPLE 10

Section 6(12)(d):

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under section 6(15). Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000, resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under section 7(1).

EXAMPLE 11

Section 6(12)(d):

Given the same facts as in example 10, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under section 7(1).

PART IV

SECTION 7.—MATERIALS

Valuation of materials used in the production of a good other than certain automotive goods:

(1) Except as otherwise provided for non-originating materials used in the production of a good referred to in section 9(1) or 10(1), and except in the case of indirect materials, intermediate materials, packing materials and containers and self-produced packaging materials and containers, for purposes of calculating the regional value content of a good, the value of a material that is used in the production of the good shall be

(a) except as otherwise provided in subsection (2), where the material is imported by the producer of the good into the territory of the NAFTA country in which the good is produced, the customs value of the material with respect to that importation, or

(b) where the material is acquired by the producer of the good from another person located in the territory of the NAFTA country in which the good is produced

(i) the transaction value, determined in accordance with section 2(1) of Schedule VIII, with respect to the transaction in which the producer acquired the material, or

(ii) the value determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction in which the producer acquired the material, there is no transaction value under section 2(2) of that Schedule or the transaction value is unacceptable under section 2(3) of that Schedule,

and shall include the following costs if they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Customs administration may use Schedule VIII if customs value not correctly determined:

(2) For purposes of subsection (1)(a), where the customs administration of the NAFTA country into which the good is imported determines during the course of a verification of origin of the good that the customs value of the material referred to in that paragraph was not correctly de-

termined, it may, for purposes of determining whether the good is an originating good, require that the value of that material be determined in accordance with Schedule VIII with respect to the importation of that material and, where the costs referred to in subsections (1)(c) through (f) are not included in that value, that those costs be added to that value.

Costs recorded on books:

(3) For purposes of subsection (1), the costs referred to in subsections (1)(c) through (f) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

Designation of self-produced material as an intermediate material; limitation on designations; designation is optional:

(4) Except for purposes of determining the value of non-originating materials used in the production of a light-duty automotive good and except in the case of an automotive component assembly, automotive component or sub-component for use as original equipment in the production of a heavy-duty vehicle, for purposes of calculating the regional value content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that where an intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(5) For purposes of subsection (4),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material shall be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in section 14(3), the proviso set out in subsection (4) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (4).

Valuation of an intermediate material:

(6) The value of an intermediate material shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to that intermediate material in accordance with Schedule VII; or

(b) the aggregate of each cost, calculated on the basis of the costs that are recorded on the books of the producer, that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule VII.

Rescission of a designation during course of verification; option to designate another intermediate material:

(7) Where a producer of a good designates a self-produced material as an intermediate material under subsection (4) and the customs administration of a NAFTA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated.

(8) A producer of a good who rescinds a designation under subsection (7)

(a) shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(b) may, not later than 30 days after the customs administration referred to in subsection (7) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the proviso set out in subsection (4).

(9) Where a producer of a good designates another self-produced material as an intermediate material under subsection (8)(b) and the customs administration referred to in subsection (7) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated;

(b) the producer shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(c) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

Indirect Materials; deemed originating; value as recorded on books of producer:

(10) For purposes of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) shall be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value-content requirement, for purposes of calculating the net cost under the net cost method, the value of the indirect material shall be the costs of that material that are recorded on the books of the producer of the good.

Packaging Materials and Containers; deemed to be originating for tariff change rules:

(11) Packaging materials and containers, if classified under the Harmonized System with the good that is packaged therein, shall be disregarded for purposes of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification; and

(b) determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

Actual originating status considered for RVC requirement; valuation of packaging:

(12) Where packaging materials and containers are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value-content requirement,

(a) the value of those packaging materials and containers shall be taken into account as originating materials or non-originating materials, as the case may be, for purposes of calculating the regional value content of the good; and

(b) except as otherwise provided in sections 4(6) and (7) of Schedule II, the value of those packaging materials and containers shall be

(i) where the packaging materials and containers are acquired by the producer of the good from another person, their value as determined in accordance with subsection (1), or

(ii) where the packaging materials and containers are produced by the producer of the good, at the choice of the producer,

(A) the total cost incurred with respect to all goods produced by the producer of the good, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to those packaging materials and containers in accordance with Schedule VII, or

(B) the aggregate of each cost, calculated on the basis of the costs that are recorded on the books of the producer, that forms part of the total cost incurred with respect to those packaging materials and containers that can be reasonably allocated to those packaging materials in accordance with Schedule VII.

Packing materials and containers; disregarded for tariff change rule and for RVC requirement; value as recorded on books:

(13) For purposes of determining whether a good is an originating good, packing materials and containers in which the good is packed

(a) shall be disregarded for purposes of determining whether

(i) the non-originating materials used in the production of the good undergo an applicable change in tariff classification, and

(ii) the good satisfies a regional value-content requirement; and

(b) if the good is subject to a regional value-content requirement, the value of the packing materials and containers shall be the costs thereof that are recorded on the books of the producer of the good.

Fungible materials; fungible commingled goods; inventory management methods for determining whether originating:

(14) For purposes of determining whether a good is an originating good,

(a) where originating materials and non-originating materials that are fungible materials are used in the production of the good, the determination of whether the materials are originating materials may, at the choice of the producer of the good or the person from whom the producer acquired the materials, be made on the basis of any of the applicable inventory management methods set out in Schedule X; and

(b) where originating goods and non-originating goods that are fungible goods are physically combined or mixed in inventory and prior to exportation do not undergo production or any other operation in the territory of the NAFTA country in which they were physically combined or mixed in inventory, other than unloading, reloading or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation to the territory of another NAFTA country, the determination of whether the good is an originating good may, at the choice of the exporter of the good or the person from whom the exporter acquired the good, be made on the basis of any of the applicable inventory management methods set out in Schedule X.

Accessories, spare parts and tools; deemed originating for tariff change rule; actual origin applicable for RVC requirement:

(15) Accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools, are originating materials if the good is an originating good, and shall be disregarded for purposes of determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification or determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification, provided that

(a) the accessories, spare parts or tools are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good, within the industry that produces the good.

(16) Where a good is subject to a regional value-content requirement, the value of accessories, spare parts and tools that are delivered with that good and form part of the good's standard accessories, spare parts or tools shall be taken into account as originating materials or non-origi-

nating materials, as the case may be, in calculating the regional value content of the good.

Examples illustrating the provisions on materials:

(17) Each of the following examples is an "Example" as referred to in section 2(4).

EXAMPLE 1

Section 7(5), Value of Intermediate Materials :

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement under section 4(2)(b). The producer also produces Material A, which is used in the production of Good B. Both originating materials and non-originating materials are used in the production of Material A. Material A is subject to a change in tariff classification requirement under section 4(2)(a). The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs (including $0.30 in royalties):	0.50
Other costs	0.10
Total cost of Material A	10.60

The producer designates Material A as an intermediate material and determines that, because all of the non-originating materials that are used in the production of Material A undergo an applicable change in tariff classification set out in Schedule I, Material A would, under paragraph 4(2)(a) qualify as an originating material. The cost of the non-originating materials used in the production of Material A is therefore not included in the value of non-originating materials that are used in the production of Good B for the purpose of determining the regional value content of Good B. Because Material A has been designated as an intermediate material, the total cost of Material A, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of Good B. The total cost of Good B is determined in accordance with the following figures:

Product costs:	
Value of originating materials	
Intermediate materials	$10.60
Other materials	3.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs	2.50
Other costs	0.10
Total cost Good of B	28.20

EXAMPLE 2

Section 7(5), Effects of the Designation of Self-produced Materials on Net Cost:

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 7(1). The following situations demonstrate how this is achieved:

Situation 1:

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer purchases Material A, which is used in the production of Good B, from a supplier located in a NAFTA country. The value of Material A determined in accordance with subsection 7(1) is $11.00. Material A is an originating material. All other materials used in the production of Good B are non-originating materials. The net cost of Good B is determined as follows:

Product costs:	
Value of originating materials (Material A)	$11.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Good B	23.60
Excluded costs (included in period costs)	0.20
Net cost of Good B	23.40

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$23.40 - \$5.50}{\$23.40} \times 100$$

$$= 76.5\%$$

The regional value content of Good B is 76.5 percent, and Good B, therefore, qualifies as an originating good.

Situation 2:

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A which is used

in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	12.60

The producer does not designate Material A as an intermediate material under subsection 7(4). The net cost of Good B is calculated as follows:

	Costs of Material A (not designated as an intermediate material	Additional costs to produce Good B	Total
Product costs:			
Value of originating materials	$1.00	$0.00	$1.00
Value of non-originating materials	7.50	5.50	13.00
Other product costs	1.50	6.50	8.00
Period costs (including $0.20 in excluded costs)	0.50	0.50	1.00
Other costs	0.10	0.10	0.20
Total cost of Good B	10.60	12.60	23.20
Excluded costs (in period costs)	0.20	0.20	0.40
Net cost of Good B (total cost minus excluded costs)			22.80

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$22,80 - \$13.00}{\$22.80} \times 100$$

$$= 42.9\%$$

The regional value content of Good B is 42.9 percent, and Good B, therefore, does not qualify as an originating good.

Situation 3:

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A, which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	12.60

The producer designates Material A as an intermediate material under subsection 7(4). Material A qualifies as an originating material under paragraph 4(2)(a). Therefore, the value of non-originating materials used in the production of Material A is not included in the value of non-originating materials for the purposes of calculating the regional value content of Good B. The net cost of Good B is calculated as follows:

	Costs of Material A (not designated as an intermediate material	Additional costs to produce Good B	Total
Product costs:			
Value of originating materials	$10.60	$0.00	$10.60
Value of non-originating materials		5.50	5.50
Other product costs		6.50	6.50
Period costs (including $0.20 in excluded costs)		0.50	0.50
Other costs		0.10	0.10
Total cost of Good B	10.60	12.60	23.20
Excluded costs (in period costs)	0.0	0.20	0.20
Net cost of Good B (total cost minus excluded costs)			23.00

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$23,00 - \$5.50}{\$23.00} \times 100$$

$$= 76.1\%$$

The regional value content of Good B is 76.1 percent, and Good B, therefore, qualifies as an originating good.

EXAMPLE 3

Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials:

Producer A, located in NAFTA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value-content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value-content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 percent.

Producer A sells the switches to Producer B, located in NAFTA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value-content requirement. Producers A and B are not accumulating their production within the meaning of section 14. Producer B is therefore able, under section 7(4), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 14, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

EXAMPLE 4

Single Producer and Successive Designations of Materials Subject to a Regional Value-Content Requirement as Intermediate Materials:

Producer A, located in NAFTA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value-content requirement. Producer A designates Material A as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a re-

gional value-content requirement. Under the proviso set out in section 7(4), Producer A cannot designate Material Y as an intermediate material, even if Material Y satisfies the applicable regional value-content requirement, because Material X was already designated by Producer A as an intermediate material.

EXAMPLE 5

Single Producer and Multiple Designations of Materials as Intermediate Materials:

Producer X, who is located in NAFTA country X, uses non-originating materials in the production of self-produced materials A, B, and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to NAFTA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value-content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value-content requirement, Producer X may, under section 7(4), designate all of the self-produced materials as intermediate materials. The proviso set out in section 7(4) only applies where self-produced materials are used in the production of other self-produced materials and both are subject to a regional value-content requirement.

EXAMPLE 6

Section 7(15):

The following are examples of accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools:

(a) consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,
(b) a carrying case for equipment,
(c) a dust cover for a machine,
(d) an operational manual for a vehicle,
(e) brackets to attach equipment to a wall,
(f) a bicycle tool kit or a car jack,
(g) a set of wrenches to change the bit on a chuck,
(h) a brush or other tool to clean out a machine, and
(i) electrical cords and power bars for use with electronic goods.

PART V

AUTOMOTIVE GOODS

SECTION 8. – DEFINITIONS AND INTERPRETATION

For purposes of this Part,

"after-market parts" means goods that are not for use as original equipment in the production of light-duty vehicles or heavy-duty vehicles and that are

(a) goods provided for in a tariff provision listed in Schedule IV, or
(b) automotive component assemblies, automotive components, sub-components or listed materials;

"class of motor vehicles" means any one of the following categories of motor vehicles:

(a) motor vehicles provided for in any of subheading 8701.20, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and headings 8705 and 8706,
(b) motor vehicles provided for in any of subheadings 8701.10 and 8701.30 through 8701.90,
(c) motor vehicles provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8704.21 and 8704.31, and
(d) motor vehicles provided for in any of subheadings 8703.21 through 8703.90;

"complete motor vehicle assembly process" means the production of a motor vehicle from separate constituent parts, which parts include the following:

(a) a structural frame or unibody,
(b) body panels,
(c) an engine, a transmission and a drive train,
(d) brake components,
(e) steering and suspension components,
(f) seating and internal trim,
(g) bumpers and external trim,
(h) wheels, and
(i) electrical and lighting components;

"first prototype" means the first motor vehicle that

(a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and
(b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

"floor pan of a motor vehicle" means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the firewall or bulkhead of the motor vehicle and ending

(a) where there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, and

(b) where there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

"heavy-duty automotive good" means a heavy-duty vehicle or a heavy-duty component;

"heavy-duty component" means an automotive component or automotive component assembly that is for use as original equipment in the production of a heavy-duty vehicle;

"marque" means a trade name used by a marketing division of a motor vehicle assembler that is separate from any other marketing division of that motor vehicle assembler;

"model line" means a group of motor vehicles having the same platform or model name;

"model name" means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler

(a) to differentiate the motor vehicle from other motor vehicles that use the same platform design,

(b) to associate the motor vehicle with other motor vehicles that use different platform designs, or

(c) to denote a platform design;

"new building" means a new construction to house a complete motor vehicle assembly process, where that construction includes the pouring or construction of a new foundation and floor, the erection of a new frame and roof, and the installation of new plumbing and electrical and other utilities;

"plant" means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:

(a) light-duty vehicles and heavy-duty vehicles,

(b) goods of a tariff provision listed in Schedule IV, and

(c) automotive component assemblies, automotive components, sub-components and listed materials;

"platform" means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

"received in the territory of a NAFTA country" means, with respect to section 9(2), the location at which a traced material arrives in the territory of a NAFTA country and is documented for any customs purpose, which, in the case of a traced material imported into

(a) Canada,

(i) where the traced material is imported on a vessel, as defined in section 2 of the *Reporting of Imported Goods Regula-*

tions, is the location at which the traced material is last unloaded from the vessel and reported, under section 12 of the *Customs Act,* to a customs office, including reported for transportation under bond by a conveyance other than that vessel, and

(ii) in any other case, is the location at which the traced material is reported, under section 12 of the *Customs Act,* to a customs office, including reported for transportation under bond,

(b) Mexico,

(i) where the traced material is imported on a vessel, the location at which the traced material is last unloaded from a vessel and reported for any customs purpose, and

(ii) in any other case, the location at which the traced material is reported for any customs purpose, and

(c) the United States, is the location at which the traced material is entered for any customs purpose, including entered for consumption, entered for warehouse or entered for transportation under bond, or admitted into a foreign trade zone;

"refit" means a closure of a plant for a period of at least three consecutive months that is for purposes of plant conversion or retooling;

"size category", with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 m^3) or less,

(b) more than 85 cubic feet (2.38 m^3) but less than 100 cubic feet (2.80 m^3),

(c) 100 cubic feet (2.80 m^3) or more but not more than 110 cubic feet (3.08 m^3),

(d) more than 110 cubic feet (3.08 m^3) but less than 120 cubic feet (3.36 m^3), or

(e) 120 cubic feet (3.36 m^3) or more;

"traced material" means a material, produced outside the territories of the NAFTA countries, that is imported from outside the territories of the NAFTA countries and is, when imported, of a tariff provision listed in Schedule IV;

"underbody" means the floor pan of a motor vehicle.

SECTION 9.—LIGHT-DUTY AUTOMOTIVE GOODS

VNM determined by tracing of certain non-originating materials:

(1) For purposes of calculating the regional value content of a light-duty automotive good under the net cost method, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are traced materials and are incorporated into the good.

Valuation of traced materials for VNM in the RVC:

(2) Except as otherwise provided in subsections (3) and (6) through (8), the value of each of the traced materials that is incorporated into a good shall be

(a) where the producer imports the traced material from outside the territories of the NAFTA countries and has or takes title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(b) where the producer imports the traced material from outside the territories of the NAFTA countries and does not have or take title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was when the producer takes title in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(c) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person has or takes title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(d) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person does not have or take title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was located when the first person in the territory of a NAFTA country takes title, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(e) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires the traced material or a material that incorporates the traced material from a person in the territory of a NAFTA country who has title to it, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material or the material that incorporates it, and

(ii) states the value of the traced material or a material that incorporates the traced material, determined in accordance with subsection (5), with respect to a transaction that occurs after the customs value of the traced material was determined,

the value of the traced material or the material that incorporates the traced material, determined in accordance with subsection (5), with respect to the transaction referred to in that statement;

(f) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material but does not state any value with respect to the traced material,

an amount equal to $VM \times (1 - RVCR)$

where

VM	is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer acquired that material, and
RVCR	is the regional value-content requirement for the acquired material, expressed as a decimal;

(g) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires a material that

(i) incorporates that traced material,
(ii) was produced in the territory of a NAFTA country, and
(iii) with respect to which an amount was determined in accordance with paragraph (f),

if the producer of the good has a statement signed by the person from whom the producer acquired that material that states that amount, the amount as determined in accordance with paragraph (f); and

(h) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer does not have a statement described in any of paragraphs (c) through (g), the value of the traced material or any material that incorporates it, determined in accordance with subsection (5) with respect to the transaction in which the producer acquires the traced material or any material that incorporates it.

Customs administration may use Schedule VIII if customs value is not correctly determined:

(3) For purposes of subsections (2)(a) through (d), where the customs administration of the NAFTA country into the territory of which the good is imported determines during the course of a verification of origin of the good that the customs value of the traced material referred to in those paragraphs was not correctly determined, it may, for purposes of determining whether the good is an originating good, require that the value of the material be determined in accordance with Schedule VIII with respect to the importation for which that customs value was determined and, where the costs referred to in subsection (4) are not included in that value, that those costs be added to that value.

Additional costs included in traced value if not already included in value:

(4) The costs referred to in subsections (2)(a) through (d) and subsection (3) are the following:

(a) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(b) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries.

Value of traced material determined under Schedule VIII if value is not customs value:

(5) For purposes of subsections (2)(e), (f) and (h) and subsections (6) and (7), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that paragraph or subsection, or

(b) shall be determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction referred to in that paragraph or subsection, there is no transaction value for the material under section 2(2) of that Schedule, or the transaction value of the material is unacceptable under section 2(3) of that Schedule,

and, where not included under paragraph (a) or (b), shall include taxes, other than duties paid on an importation of a material from a NAFTA country, paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than taxes that are waived, refunded, refundable or otherwise recoverable, including credit against tax paid or payable.

(6) Where it is determined, during the course of a verification of origin of a light-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (2)(f), that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (2), be determined in accordance with subsection (5) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified:

(7) Where any person who has information with respect to a statement referred to in any of subsections (2)(c) through (h) does not allow a customs administration to verify that information during a verification of origin, the value of the material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (5) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material:

(8) Where a traced material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a light-duty automotive good, the statement referred to in subsection (2)(c), (d) or (e) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the traced material.

Interpretations and clarifications for provisions applicable to tracing rules for light-duty automotive goods:

(9) For purposes of this section,

(a) where a producer, in accordance with section 7(4), designates as an intermediate material any self-produced material used in the production of a light-duty automotive good,

(i) the designation applies solely to the calculation of the net cost of that good, and

(ii) the value of a traced material that is incorporated into that good shall be determined as though the designation had not been made;

(b) the value of a material not listed in Schedule IV, when imported from outside the territories of the NAFTA countries,

(i) shall not be included in the value of non-originating materials that are used in the production of a light-duty automotive good, and

(ii) shall be included in calculating the net cost of a light-duty automotive good that incorporates that material;

(c) except as otherwise provided in section 12(6), this section does not apply with respect to after-market parts;

(d) the costs referred to in subsections (2)(a)(ii) and (b)(ii), subsections (2)(c)(ii)(B) and (d)(ii)(B) and subsections (4) and (5) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the light-duty automotive good; and

(e) for purposes of calculating the regional value content of a light-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (5) with respect to the transaction in which the producer acquired it.

Examples of application of tracing for light-duty automotive goods:

(10) Each of the following examples is an "Example" as referred to in section 2(4).

EXAMPLE 1

Nuts and bolts provided for in heading 7318 are imported from outside the territories of the NAFTA countries and are used in the territory of a NAFTA country in the production of a light-duty automotive good referred to in section 9(1). Heading 7318 is not listed in Schedule IV so the nuts and bolts are not traced materials.

Because the nuts and bolts are not traced materials the value, under section 9(1), of the nuts and bolts is not included in the value of non-originating materials used in the light-duty automotive good even though the nuts and bolts are imported from outside the territories of the NAFTA countries.

The value, under section 9(9)(b), of the nuts and bolts is included in the net cost of the light-duty automotive good for the purposes of calculating, under section 9(1), regional value content of the motor vehicle.

EXAMPLE 2

A rear view mirror provided for in subheading 7009.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

Subheading 7009.10 is listed in Schedule IV. The rear view mirror is a traced material. For purposes of calculating, under section 9(1), regional value content of the light-duty vehicle, the value of the mirror is included in the value of non-originating materials in accordance with sections 9(2) through(9).

EXAMPLE 3

Glass provided for in heading 7005 is imported from outside the territories of the NAFTA countries and is used in the territory of NAFTA country A in the production of a rear view mirror. The rear view mirror is a non-originating good becauseit fails to satisfy the applicable change in tariff classification.

That rear view mirror is exported to NAFTA country B where it is used as original equipment in the production of a light-duty vehicle. Even though the rear view mirror is a non-originating material and is provided for in a tariff item listed in Schedule IV, it is not a traced material because it was not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle in which the rearview mirror is incorporated, the value of the rear view mirror,under section 9(1), is not included in the value of non-originating materials used in the production of the light-duty vehicle.

Even though the glass provided for in heading 7005 that was used in the production of the rear view mirror and incorporated into the light-duty vehicle was imported from outside the territories of the NAFTA countries, the glass is not a traced material because heading 7005 is not listed in Schedule IV. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the glass,the value of the glass is not included in the value of non-originating materials used in the production of the light-duty vehicle. The value of the rear view mirror would be included in the net cost of the light-duty vehicle, but the value of theimported glass would not be separately included in the value of non-originating materials of the light-duty vehicle.

EXAMPLE 4

An electric motor provided for in subheading 8501.10 is imported from outside the territories of the NAFTA countries andis used in the territory of a NAFTA country in the production of a seat frame provided for in subheading 9401.90. The seat frame, with the electric motor attached, is sold to a producer of seats provided for in subheading 9401.20. The seat producer sells these at to a producer of light-duty vehicles. The seat is to be used as original equipment in the production of that light-duty vehicle.

Subheadings 8501.10 and 9401.20 are listed in Schedule IV; subheading 9401.90 is not. The electric motor is a traced material; the seat is not

a traced material because it was not imported from outside the territories of the NAFTA countries.

The seat is a light-duty automotive good referred to insection 9(1). For purposes of calculating, under section 9(1),the regional value content of the seat, the value of traced materials incorporated into it is included in the value of non-originating materials used in the production of the seat. The value of the electric motor is included in that value. (However,the value of the motor would not be included separately in the net cost of the seat because the value of the motor is included as part of the cost of the seat frame.)

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the electric motor is included in the value of non-originating materials used in the production of the light-duty vehicle, even if the seat is an originating material.

EXAMPLE 5

Cast blocks, cast heads and connecting rod assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer, who has title to them at the time of importation, and are used by the producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. After the regional value content of the engine is calculated, the engine is an originating good. It is not a traced material because it was not imported from outside the territories of the NAFTA countries. The engineis exported to NAFTA country B, to be used as original equipment by a producer of light-duty vehicles.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine, because heading 8409 is listed in Schedule IV and because the cast blocks, cast heads and connecting rod assemblies were imported into the territory of a NAFTA country and are incorporated into the light-duty vehicle,the value of those materials, which are traced materials, is included in the value of non-originating materials used in the production of the light-duty vehicle, even though the engine is an originating material.

The producer of the light-duty vehicle did not import the traced materials. However, because that producer has a statement referred to in section 9(2)(c) and that statement states the value of non-originating materials of the traced materials in accordance with section 12(2), the producer of the light-duty vehicle may, in accordance with section 9(8), use that value asthe value of non-originating materials of the light-duty vehicle with respect to that engine.

EXAMPLE 6

Aluminum ingots provided for in subheading 7601.10 and piston assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer and are used by that producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. The aluminum ingots are used

by the producer to produce anengine block; the piston assembly is then incorporated into the engine block and the producer designates, in accordance with section 7(4), a short block provided for in heading 8409 as an intermediate material. The engine that incorporates the shortblock is exported to NAFTA country B and used as original equipment in the production of a light-duty vehicle. The piston assemblies provided for in heading 8409 are traced materials; neither the engine nor the short block are traced materials because they were not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of the engine, the value of the piston assemblies is included, under section 9(9)(a)(ii), in the value of non-originating materials, even if the intermediate material is an originating material. However, the value of the aluminum ingots is not included in the value of non-originating materials because subheading 7601.10 is not listed in Schedule IV. The value of the aluminum ingots does not need to be included separately in the net cost of the engine because that value is included in the value of the intermediate material, and the total cost of the intermediate material is included in the net cost ofthe engine.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine (and the piston assemblies), the value of the piston assemblies incorporated into that light-duty vehicle is included in the value of non-originating materials of thelight-duty vehicle.

Example 7

An engine provided for in heading 8407 is imported from outside the territories of the NAFTA countries. The producer ofthe engine, located in the country from which the engine is imported, used in the production of the engine a piston assembly provided for in heading 8409 that was produced in a NAFTA countryand is an originating good. The engine is used in the territory of a NAFTA country as original equipment in the production of alight-duty vehicle. The engine is a traced material.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle that incorporates that engine, the value of the engine is included in the value of non-originating materials of that light-duty vehicle. The value of the piston assembly, which was, before its exportation to outside the territories of the NAFTA countries, an originating good, shall not be deducted from the value of non-originating materials used in the production of the light-duty vehicle. Under section 18 (transshipment), the piston assembly is no longer considered to be an originating good because it was used in the production of a good outside the territories of the NAFTA countries.

Example 8

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hoses provided for in heading 4009, which is listed in Schedule IV. The

wholesaler takes title to the goodsat the wholesaler's place of business in City A. The customs value of the imported goods is $500. All freight, taxes and duties associated with the good to the wholesaler's place of business total $100; the cost of the freight, included in that $100, from the place where it was received in the territory of a NAFTA country to the location of the wholesaler's place ofbusiness in City A is $25. The wholesaler sells the rubber hoses for $650 to a producer of light-duty vehicles who uses the goods in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The light-duty vehicle producer pays $50 to have the goods shipped from the location ofthe wholesaler's place of business in City A to the location at which the light-duty vehicle is produced.

The rubber hoses are traced materials and they are incorporated into a light-duty automotive good. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle,

(1) if the wholesaler takes title to the goods before the first place at which they were received in the territory of a NAFTA country, then the value of non-originating materials, where the light-duty vehicle producer has a statement referred to in section 9(2)(c), would not include the cost of freight from the place where they were received in the territory of a NAFTA country to the location of the wholesaler's place of business: in this situation, the value of non-originating materials would be $575;

(2) if the producer has a statement referred to in section 9(2)(d) that states the customs value of the traced material and, where not included in that price, the cost of taxes, duties, fees and transporting the goods to the place where title is taken, the light-duty vehicle producer may use those values as the value of non-originating materials with respect to the goods: in this situation, the value of non-originating materials would be $600; or

(3) if the wholesaler is unwilling to provide the light-duty vehicle producer with such a statement, the value of non-originating materials with respect to the traced materials will be the value of the materials with respect to the transaction in which the producer acquired them, as provided for in section 9(2)(h), in this instance $650; the costs of transporting the goods from the location of the wholesaler's place of business to the location of the producer will be included in the net cost of the goods, but not in the value of non-originating materials.

Example 9

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV. The wholesaler sells the good to a producer located in the territory of the NAFTA country who uses the hose to produce a power steering hose assembly, also provided for in heading 4009. The power steering hose assembly is then sold to a producer of light-duty vehicles who uses that good inthe production of a light-duty vehicle. The rubber hose is a traced

material; the power steering hose assembly is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The wholesaler who imported the rubber hose from outside the territories of the NAFTA countries has title to it at the time of importation. The customs value of the good is $3, including freight and insurance and all other costs incurred in transporting the good to the first place at which it was received in the territory of the NAFTA country. Duties and fees and allother costs referred to in section 9(4), paid by the wholesaler with respect to the good, total an additional $1. The wholesaler sells the good to the producer of the power steering hose assemblies for $5, not including freight to the location of thatproducer. The power steering hose producer pays $2 to have the good delivered to the location of production. The value of the power steering hose assembly sold to the light-duty vehicle producer is $10, including freight for delivery of the goods to the location of the light-duty vehicle producer.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle:

(1) if the motor vehicle producer has a statement referred to in section 9(2)(c) from the producer of the power steering hose assembly that states the customs value of the imported rubber hose incorporated in the power steering hose assembly, and the value of the duties, fees and other costs referred to in section 9(4), the producer may use those values as the value of non-originating materials with respect to that traced good: in this situation, that value would be the customs value of $3 and the cost of duties and fees of $1, provided that the wholesaler has provided the producer of the power steering hose assembly with the information regarding the customs value of the imported good and the other costs;

(2) if the light-duty vehicle producer has a statement from the producer of the power steering hose assembly that states the value of the imported hose, with respect to the transaction in which the power steering hose assembly producer acquires the imported hose from the wholesaler, the light-duty vehicle producer may include that value as the value of non-originating materials, in accordance with section 9(2)(e): in this situation, that value is $5; and the $2 cost of transporting the good from the location of the wholesaler to the location of the producer, because that cost is separately identified, would not be included in the value of non-originating materials of the light-duty vehicle;

(3) if the light-duty vehicle producer has a statement referred to in section 9(2)(f) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(f)(ii) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value-content requirement were 50 percent, the value of non-originating materials would be $5; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identi-

fied, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(f)(ii) does not allow for the deduction of transportation costs that would otherwise not be non-originating; or

(4) if the light-duty vehicle producer does not have a statement referred to in any of sections 9(2)(c) through (g) from the producer of the power steering hose assembly, the light-duty vehicle producer includes in the value of non-originating materials of the vehicles the value, determined in accordance with section 9(2)(h), of the power steering hose assembly: in this situation, that amount would be $10, the cost to the producer of acquiring that material.

EXAMPLE 10

A producer of light-duty vehicles located in City C in the territory of a NAFTA country imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV, and uses that good as original equipment in the production of a light-duty vehicle.

The rubber hose arrives at City A in the NAFTA country, but the producer of the light-duty vehicle does not have title to thegood; it is transported under bond to City B, and on its arrival in City B, the producer of the light-duty vehicle takes title to it and the good is received in the territory of a NAFTA country. The good is then transported to the location of the light-duty vehicle producer in City C.

The customs value of the imported good is $4, the transportation and other costs referred to in subparagraph 9(2)(b)(ii) to City A are $3 and to City B are $2, and the cost of duties, taxes and other fees referred to in section 9(4) is $1. The cost of transporting the good from City B to thelocation of the producer in City C is $1. The rubber hose istraced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value, under section 9(2)(b), of non-originating materials of that vehicle is the customs value of the traced material and, where not included in that value, the cost of taxes, duties, fees and the cost of transporting the traced material to the place where title is taken. In this situation, the value of non-originating materials would be the customs value of the traced material, $4, the cost of duties taxes and other fees, $1, the cost of transporting the material to City A, $3, and the cost of transporting that material from City A to City B, $2, for a total of $10. The $1 cost of transporting the good from City B to the location of the producer in City C would not be included in the value of non-originating materials of the light-duty vehicle because a person of a NAFTA country has taken title to the traced material.

EXAMPLE 11

A radiator provided for in subheading 8708.91 is imported from outside the territories of the NAFTA countries by a producer of light-duty vehicles and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

The radiator is transported by ship from outside the territories of the NAFTA countries and arrives in the territory of the NAFTA country at City A. The radiator is not, however, unloaded at City A and although the radiator is physically present in the territory of the NAFTA country, it has not been received in the territory of a NAFTA country.

The ship sails in territorial waters from City A to City Band the radiator is unloaded there. The light-duty vehicle producer files, from City C in the same country, the entry for the radiator; the radiator enters the territory of the NAFTA country at City B.

Subheading 8708.91 is listed in Schedule IV. The radiator is a traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the radiator is included in the value of non-originating materials of the light-duty vehicle. The costs of any freight, insurance, packing and other costs incurred in transporting the radiator to City B are included in the value of non-originating materials of the light-duty vehicle, including the cost of transporting the radiator from City A to City B. The costs ofany freight, insurance, packing and other costs that were incurred in transporting the radiator from City B to the location of the producer are not included in the value of non-originating materials of the light-duty vehicle.

SECTION 10.–HEAVY-DUTY AUTOMOTIVE GOODS

Determining VNM for the calculation of the RVC for heavy-duty automotive goods:

(1) Except as otherwise provided in subsections (3) through (8) and section 12(4), for purposes of calculating the regional value content of a heavy-duty automotive good under the net cost method, the value of non-originating materials used by the producer of the good in the production of the good shall be the sum of

(a) for each listed material that is a non-originating material, is a self-produced material and is used by the producer in the production of the good, at the choice of the producer, either

(i) the total cost that can be reasonably allocated to that listed material in accordance with Schedule VII, or

(ii) the sum of

(A) the customs value of each non-originating material imported by the producer and used in the production of the listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(B) the value of each non-originating material that is not imported by the producer of the listed material and is used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired it;

(b) for each listed material that is a non-originating material, is produced in the territory of a NAFTA country and is acquired and

used by the producer in the production of the good, at the choice of the producer, either

(i) the value of that non-originating listed material, determined in accordance with subsection (2), with respect to the transaction in which the producer acquired the listed material, or

(ii) where the producer of the good has a statement described in clause (A) or (B) with respect to each material that is a non-originating material used in the production of that listed material, the sum of

(A) the customs value of each non-originating material imported by the producer of the listed material and used in the production of that listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), if the producer of the good has a statement signed by the producer of the listed material that states the customs value of that non-originating material and the costs referred to in subsections (2)(c) through (f) that the producer of the listed material incurred with respect to the non-originating material, and

(B) the value of each non-originating material that is not imported by the producer of the listed material, and is acquired and used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired that non-originating material, if the producer of the good has a statement signed by the producer of the listed material that states the value of the acquired material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired the non-originating material;

(c) for each listed material, automotive component assembly, automotive component or sub-component that is imported from outside the territories of the NAFTA countries, and is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating listed material, automotive component assembly, automotive component or sub-component, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating listed material, automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(d) for each automotive component assembly, automotive component or sub-component that is an originating material and is acquired and used by the producer in the production of the good, at the choice of the producer,

(i) the sum of

(A) the value of each non-originating listed material used in the production of the originating material, determined under paragraphs (a) and (b),

(B) the value of each non-originating material incorporated into the originating material, determined under paragraph (c),

(C) the value of each non-originating listed material used in the production of a material referred to in paragraph (e) that is used in the production of the originating material, determined under paragraphs (a) and (b), and

(D) where the value of a non-originating listed material referred to in clause (C), and used in the production of a non-originating automotive component assembly, automotive component or sub-component that is used in the production of the originating material, is not included under clause (C), the value of that automotive component assembly, automotive component or sub-component, determined under paragraph (e)(ii),

if the producer has a statement, signed by the person from whom the originating material was acquired, that states the sum of the values, as determined by the producer of the originating material under paragraphs (a), (b), (c) and (e) of each non-originating material referred to in any of clauses (A) through (D) that is incorporated into that originating material;

(ii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVCR)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material; and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material but does not state the value of non-originating materials with respect to that acquired material; or

(iii) the value of that automotive component assembly, automotive component or sub-component determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material;

(e) for each automotive component assembly, automotive component or sub-component that is a non-originating material produced in the territory of a NAFTA country and that is acquired by the pro-

ducer and used by the producer in the production of the good, at the choice of the producer, either

(i) the sum of the values of the non-originating materials incorporated into that non-originating material that is acquired by the producer, determined under paragraphs (a), (b), (c), (d) and (f), if the producer has a statement, signed by the person from whom the non-originating material was acquired, that states the sum of the values of the non-originating materials incorporated into that non-originating material, determined by the producer of the non-originating material in accordance with paragraphs (a), (b), (c), (d) and (f), or

(ii) the value of that non-originating automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material; and

(f) for each non-originating material that is not referred to in paragraph (a), (b), (c) or (e) and that is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating material, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material.

Application of Schedule VIII to determine VNM; additional costs to be included:

(2) For purposes of subsection (1)(a)(ii)(B), subsection (1)(b)(i), subsection (1)(b)(ii)(B), subsections (1)(c)(ii), (1)(d)(ii) and (iii), (1)(e)(ii) and subsection (1)(f)(ii), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that clause, subparagraph or paragraph, or

(b) where, with respect to the transaction referred to in that clause, subparagraph, or paragraph, there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value of the material is unacceptable under section 2(3) of that Schedule, shall be determined in accordance with sections 6 through 11 of that Schedule,

and shall include the following costs where they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing, and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than

duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(e) customs brokerage fees, including the cost of in-house customs brokerage and customs clearance services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Customs administration determines customs value to be incorrect:

(3) For purposes of subsections (1)(a)(ii)(A) and (b)(ii)(A) and subsections (1)(c)(i) and (1)(f)(i), where the customs administration of the NAFTA country into the territory of which the good is imported determines, during the course of a verification of origin of the good, that the customs value of an imported material referred to in those clauses was not correctly determined, it may, for the purposes of determining whether the good is an originating good, require that the value of the material be determined in accordance with Schedule VIII with respect to the importation for which that customs value was determined and, where the costs referred to in subsections (2)(c) through (f) are not included in that value, that those costs be added to the value of the material.

Option to use section 9 tracing rules in certain circumstances:

(4) For purposes of calculating the regional value content of a heavy-duty component, where

(a) a heavy-duty component is produced in the same plant as an automotive component assembly or automotive component that is of the same heading or subheading as that heavy-duty component and is for use as original equipment in a light-duty vehicle, and

(b) it is not reasonable for the producer to know which of the production will constitute a heavy-duty component for use in heavy-duty vehicle,

the value of the non-originating materials used in the production of the heavy-duty component in that plant may, at the choice of the producer, be determined in the manner set out in section 9.

(5) For purposes of calculating the regional value content of a heavy-duty vehicle, where a producer of such a vehicle acquires, for use by that producer in the production of the vehicle, a heavy-duty component with respect to which the value of non-originating materials has been determined in accordance with subsection (4), the value of the non-originating materials used by the producer with respect to that heavy-duty component is the value of non-originating materials determined under that subsection.

(6) Where it is determined, during the course of a verification of origin of a heavy-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (1)(d)(ii) that the acquired material referred to in that statement is not an originating mate-

rial, the value of the acquired material shall, for purposes of subsection (1), be determined in accordance with subsection (2) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified:

(7) Where any person who has information with respect to a statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) does not allow a customs administration to verify that information during a verification of origin, the value of any material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (2) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material:

(8) Where a heavy-duty component, sub-component or listed material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a heavy-duty automotive good, the statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the heavy-duty component, sub-component or listed material.

Interpretations and clarifications for provisions applicable to rules for determining VNM for heavy-duty automotive goods:

(9) For purposes of this section,

(a) for purposes of calculating the regional value content of a heavy-duty automotive good, sub-component or listed material, a producer of such a good may, in accordance with section 7(4), designate as an intermediate material any self-produced material, other than a heavy-duty component or sub-component, that is used in the production of that good;

(b) except as otherwise provided in section 12(6), this section does not apply with respect to after-market parts;

(c) this section does not apply to a sub-component for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good; and

(d) for purposes of calculating the regional value content of a heavy-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it.

Examples of application of rules for determining VNM for heavy-duty automotive goods:

(10) Each of the following examples is an “Example” as referred to in section 2(4).

EXAMPLE 1

A listed material is imported from outside the territories of the NAFTA countries.

A cast head, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The cast head is a listed material; the engine is an automotive component.

Situation 1: Use of the listed material in an automotive component:

For purposes of calculating the regional value content ofthe engine, the value of listed materials imported from outsidethe territories of the NAFTA countries is included in the valueof non-originating materials used in the production of theengine. Because the cast head was produced outside theterritories of the NAFTA countries, its value, under section10(1)(c), is included in the value of non-originating materialsused in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the listed material:

The engine is an originating material acquired by theproducer of the heavy-duty vehicle. For purposes of calculatingthe regional value content of the heavy-duty vehicle thatincorporates that engine (and incorporates the cast head), thevalue of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) withrespect to that engine. The producer may choose to include inthe value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1)(a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iii) multiplied by the regional value-content requirement, expressed as a decimal, for the engine; or

(c) the value, determined under section 10(1)(d)(iii), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value, determined under section 10(1)(c),of the cast head, is included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, be-

cause of the application of the equation,the value of the cast head will be included in the amount determined under section 10(1)(d)(ii) and is, consequently, included in the value of non-originating materials of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the listed material:

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1)(a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the cast head, as determined under section 10(1)(c), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

EXAMPLE 2

A material is imported from outside the territories of the NAFTA countries.

A rocker arm assembly, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The rocker arm assembly is neither a listed material nor a subcomponent; the engine is an automotive component.

Situation 1: Use of the material in an automotive component:

For purposes of calculating the regional value content of the engine, the value of non-originating materials that are not listed materials is included in the value of non-originating materials used in the production of the engine. Because the rocker arm assembly was produced outside the territories of the NAFTA countries, it is a non-originating material and its value,under section 10(1)(f), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the material:

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1)(a) through (c) and paragraph (e)(ii), of the non-originating materials;
(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iii) multiplied by the regional value-content requirement, expressed as a decimal, for the engine; or
(c) the value, determined under section 10(1)(d)(iii), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is not included in the valueof non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation,the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(ii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the material:

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker armassembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which

is the value of the non-originating materials as determined under sections 10(1)(a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is included in the value ofnon-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Situation 4: Use of the material in a self-produced automotive component:

If the engine is a self-produced material rather than an acquired material, the heavy-duty vehicle producer is using the rocker arm assembly in the production of the heavy-duty vehicle rather than in the production of the engine, because, under section 7(4), the engine cannot be designated as an intermediate material. For purposes of calculating the regional value contentof the heavy-duty vehicle, the value, under section 10(1)(f), ofthe rocker arm assembly is included in the value of non-originating materials used in the production of the heavy-duty vehicle.

EXAMPLE 3

An automotive component is imported from outside the territories of the NAFTA countries.

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component.

Situation: Use of the automotive component:

For purposes of calculating the regional value content of the heavy-duty vehicle in which the transmission is used, the value of the transmission is included in the value of the non-originating materials under section 10(1)(c), regardless of whether the producer imported the transmission or acquired it from someone else in the territory of a NAFTA country.

EXAMPLE 4

An automotive component is imported from outside the territories of the NAFTA countries.

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and combined with an engine to produce an engine-transmission assembly that will be used as original equipment inthe production of a heavy-duty vehicle. The transmission is anautomotive component; the engine-transmission assembly is anautomotive component assembly.

Situation: Use of the automotive component assembly:

The automotive component assembly is acquired by a producer who uses it in the production of a heavy-duty vehicle. If the automotive component assembly that incorporates the imported transmission is an originating material, its value is determined, at the choice of the producer, under any of sections 10(1)(d)(i),(ii) or (iii). (See example 1 for more detailed explanations of these provisions.) If the automotive component assembly that incorporates the imported transmission is a non-originating material, its value is determined, at the choice of the producer, under sections 10(1)(e)(i) or (ii). (See example 1 for more detailed explanations of these provisions.)

Regardless of whether the automotive component assembly is an originating material or a non-originating material, the value of the automotive component that was imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the heavy-duty vehicle. The transmission is a non-originating material, and, for purposes of calculating the regional value content of anautomotive component assembly or heavy-duty vehicle that incorporates that transmission, the value of the transmission is included in the value of non-originating materials used in the production of the automotive component assembly or heavy-duty vehicle that incorporates it.

EXAMPLE 5

A material is imported from outside the territories of the NAFTA countries.

An aluminum ingot, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of cast block that will be used in an engine that will be used as original equipment in the production of a heavy-duty vehicle. The aluminum ingot is not a listed material; the cast block is alisted material; the engine is an automotive component.

Situation 1: Use of the material in an intermediate material that is a listed material:

The engine producer designates the cast block as an intermediate material under section 7(4). For purposes of determining the origin of that cast block, because the aluminum ingot is classified under a different heading than the cast block, the cast block satisfies the applicable change in tariff classification and is an originating material.

Situation 2: Use of the listed material incorporating the material:

For purposes of calculating the regional value content of the engine that incorporates that cast block (and thus incorporates the aluminum ingot), the value of non-originating materials is determined under section 10(1). Because none of sections 10(1)(a) through (f) require that a listed material thatis an originating material be included in the value of non-originating materials used in the production of a good, the value of the cast block is not included in the value of non-originating materials

used in the production of the engine or in the value ofnon-originating materials used in the production of an automotive component assembly or heavy-duty vehicle that incorporates the engine.

Because section 10(1)(d) does not refer to a listed material that is an originating material, the value of the non-originating aluminum ingot used in the production of the originating cast block is not included in the value of non-originating materials used in the production of any good or material that incorporatesthe originating cast block.

EXAMPLE 6

A non-originating listed material is used to produce a sub-component that is used to produce another sub-component.

A crankshaft, produced in the territory of NAFTA country A from a forging imported from outside the territories of the NAFTA countries, is a non-originating material. The crankshaft is sold to another producer, located in the same country, who uses it to produce an originating block assembly. That block assembly is sold to another producer, also located in the same country, who uses it to produce a finished block. The finished block is soldto a producer of engines, who is located in NAFTA country B, foruse in the production of a heavy-duty vehicle. The crank shaft isa listed material; the block assembly is a sub-component, as is the finished block.

Situation 1: Calculating the regional value content of the finished block:

A sub-component is not a heavy-duty automotive good. As referred to in section 10(9)(c), for purposes of calculating the regional value content of the sub-component before it is incorporated into a heavy-duty automotive good, such as when the sub-component is exported from the territory of one NAFTA country to the territory of another NAFTA country, the value of non-originating materials of the sub-component includes only the value of non-originating materials used in the production of that sub-component. Because the block assembly is an originating material, its value is not included in the value of non-originating materials of the finished block, nor is the value ofthe non-originating crankshaft included in the value of non-originating materials used in the production of the finished block because the crankshaft was used in the production of the block assembly and was not used in the production of the finished block.

Situation 2: Calculating the regional value content of the component that incorporates the finished block:

For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates a sub-component, the value of non-originating materials used in the production of the sub-component is determined under section 10(1)(d) or (e) with respect to that sub-component. In this situation, the value, under section 10(1)(b), of the non-originating crankshaft is included in the value of non-originating materials used in the production of the engine. (See examples 1 and 2 for more detailed explanations of sections 10(1)(d) and (e).)

EXAMPLE 7

A non-listed material is imported from outside the territories of the NAFTA countries and is used in the production of another non-listed material.

A bumper part, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and is used in the production of a bumper. The bumper is used in the territory of a NAFTA country as original equipment in the production of a heavy-duty vehicle. Neither a bumper part nor a bumper is a listed material, sub-component, automotive component or automotive component assembly.

Situation 1: The non-listed material is an originating material:

The bumper is an originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, neither the value of the imported bumper part nor the value of the bumper is included in the value of the non-originating materials.

Situation 2: The non-listed material is a non-originating material:

The bumper is a non-originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(f) with respect to the bumper. In this situation, the value of the imported bumper is included in the value of non-originatingmaterials of the heavy-duty vehicle. Because a bumper is not a listed material, the producer of the heavy-duty vehicle does no thave the option, under section 10(1)(b)(ii), to include only the value of the imported bumper part in the value of non-originating materials used in the production of the heavy-duty vehicle.

EXAMPLE 8

Situation: Transhipment of a listed material:

A producer, located in the territory of a NAFTA country, produces, in that country, a cast head that is an originating good. The producer exports the cast head to outside the territories of the NAFTA territories, where valves, springs, valve lifters, a camshaft and gears are added to it to create acast head assembly. An engine producer, located in the territory of a NAFTA country, imports the cast head assembly into that country and uses it in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. A cast head is a listed material; a cast head assembly is a sub-component.

For purposes of calculating the regional value content of the engine, the value of the imported cast head assembly is included in the value of non-originating materials under section 10(1)(c). The value of the cast head cannot be deducted from the value determined under section 10(1)(c). Although the cast head was once an originating good, under section 18 when further production was performed with respect to the cast head outside the territories of the NAFTA countries, it was no longer an originating good.

EXAMPLE 9

A material is imported from outside the territories of the NAFTA countries and a heavy-duty vehicle producer self-produces a non-originating listed material.

A material, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of a water pump that will be used as original equipment by the same producer in the production of a heavy-duty vehicle. Although the producer, under section 7(4), designates the water pump as an intermediate material it is a non-originating material because it fails to satisfy the regional value-content requirement. A water pump isa listed material.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the total cost, determined under section 10(1)(a)(i), of the water pump or the value, determined under section 10(1)(a)(ii)(A), of the material imported from outside the territories of the NAFTA countries.

EXAMPLE 10

Situation: A material is acquired and used to produce a non-originating listed material:

A material, produced outside the territories of the NAFTA countries, is acquired in the territory of a NAFTA country and used in that country in the production of a water pump that will be used as original equipment in the production of a heavy-duty vehicle. The producer of the water pump and the producer of the heavy-duty vehicle are separate, unrelated producers, located in the same country. A water pump is a listed material. The waterpump is a non-originating material because it fails to satisfy the regional value-content requirement.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the value, determined under section 10(1)(b)(i) of the water pump, or, if the producer has a statement referred to in section 10(1)(b)(ii), the value on that statement, which is, in this situation, the value, determined under clause 10(1)(b)(ii)(B), of the material imported from outside the territories of the NAFTA countries.

If the statement states the value of non-originating materials of the listed material in accordance with section 12(3), the producer of the heavy-duty vehicle may, under section10(8), use that value, under section 10(1)(b)(ii), as the value of non-originating materials used in the production of the heavy-duty vehicle with respect to that water pump.

SECTION 11.—MOTOR VEHICLE AVERAGING

NC and VNM for motor vehicles may be averaged over producer's fiscal year:

(1) For purposes of calculating the regional value content of light-duty vehicles or heavy-duty vehicles, the producer of those motor vehicles may choose that

(a) the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year with respect to the motor vehicles that are in any one of the categories set out in subsection (5) that is chosen by the producer; and

(b) the sums referred to in paragraph (a) be used in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required when producer chooses to average for motor vehicles:

(2) A choice made under subsection (1) shall

(a) state the category chosen by the producer, and

(i) where the category referred to in subsection (5)(a) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(ii) where the category referred to in subsection (5)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(iii) where the category referred to in subsection (5)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the locations of the plants at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (9);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) be dated and signed by an authorized officer of the producer; and

(g) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

Averaging period:

(3) Where the fiscal year of a producer begins after the date of the entry into force of the Agreement but before one year after that date, the producer may choose that the calculation of regional value content referred to in subsection (1) be made under that subsection over the period beginning on the date of the entry into force of the Agreement and ending at the end of that fiscal year, in which case the choice shall be filed with the customs administration of each NAFTA country to which vehicles are to be exported during the period covered by the choice not later than 10 days after the entry into force of the Agreement, or such longer period as that customs administration may accept.

(4) Where the fiscal year of a producer begins on the date of the entry into force of the Agreement, the producer may make the choice referred to in subsection (1) not later than 10 days after the entry into force of the Agreement, or such longer period as the customs administration referred to in subsection (2)(g) may accept.

Categories of motor vehicles for averaging:

(5) The categories referred to in subsection (1) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(c) the same model line of motor vehicles produced in the territory of a NAFTA country.

(6) Where applicable, a producer may choose that the calculation of the regional value content of motor vehicles referred to in Schedule V.1 be made in accordance with that schedule.

Timely filing of choice to average:

(7) Subject to section 5(4) of Schedule V.1, the choice referred to in subsection (6) shall be filed with the customs administration of the NAFTA country to which vehicles referred to in that schedule are to be exported, at least 10 days before the first day of the producer's fiscal year with respect to which that choice is to apply or such shorter period as the customs administration may accept.

Choice to average cannot be rescinded:

(8) A choice filed for the period referred to in subsection (1) or (3) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

(9) For purposes of this section, where a producer files a choice under subsection (1), (3) or (4), including a choice referred to in section 13(9), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case

of a choice filed under subsection (3), during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (5).

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status:

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

SECTION 12.—AUTOMOTIVE PARTS AVERAGING

NC and VNM for automotive parts may be averaged to determine RVC of parts:

(1) The regional value content of any or all goods that are of the same tariff provision listed in Schedule IV, or any or all goods that are automotive component assemblies, automotive components, sub-components or listed materials, and are produced in the same plant, may, where the producer of those goods elects to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the goods over the period set out in subsection (5) that is chosen by the producer with respect to any or all of those goods in any one of the categories set out in subsection (4) that is chosen by the producer; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

(2) The calculation of the regional value content made under subsection (1) shall apply with respect to each unit of the goods in the category set out in subsection (4) that is chosen by the producer and produced during the period chosen by the producer under subsection (5).

VNM for each unit in a category of goods for which averaging used:

(3) The value of non-originating materials of each unit of the goods

(a) in the category set out in subsection (4) chosen by the producer, and

(b) produced during the period chosen by the producer under subsection (5),

shall be the sum of the values of non-originating materials referred to in subsection (1)(a) divided by the number of units of the goods in that category and produced during that period.

Categories of automotive parts for averaging:

(4) The categories referred to in subsection (1)(a) are the following:

(a) original equipment for use in the production of light-duty vehicles;

(b) original equipment for use in the production of heavy-duty vehicles;

(c) after-market parts;

(d) any combination of goods referred to in paragraphs (a) through (c);

(e) goods that are in a category set out in any of paragraphs (a) through (d) and are sold to one or more motor vehicle producers; and

(f) goods that are in a category set out in any of paragraphs (a) through (e) and are exported to the territory of one or more of the NAFTA countries.

Periods for averaging RVC for automotive parts:

(5) The period referred to in subsection (1)(a) is,

(a) with respect to goods referred to in subsection (4)(a), (b) or (d), or subsection (4)(e) or (f) where the goods in that category are in a category referred to in subsection (4)(a) or (b), any month, any consecutive three month period or the fiscal year of the motor vehicle producer to whom those goods are sold; and

(b) with respect to goods referred to in subsection (4)(c), or subsection (4)(e) or (f) where the goods in that category are in a category referred to in subsection (4)(c), any month, any consecutive three month period, the fiscal year of that producer or the fiscal year of the motor vehicle producer to whom those goods are sold.

Applicable method for averaging under different categories:

(6) Where a producer chooses that the regional value content of goods be calculated in accordance with subsection (1) and the goods are in any of the categories set out in subsections (4)(d) through (f), the value of non-originating materials

(a) shall be determined in the manner set out in section 9, where any of those goods are light-duty automotive goods;

(b) shall be determined in the manner set out in section 10, where any of those goods are heavy-duty automotive goods but none of the goods are light-duty automotive goods; and

(c) shall be determined in the manner set out in section 7, where none of those goods are light-duty automotive goods or heavy-duty automotive goods.

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status:

(7) Where the producer of a good has calculated the regional value content of the good on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under subsection (1), the producer shall conduct an analysis, at the end of the producer's fiscal year following the end of that period, of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

SECTION 13. – SPECIAL REGIONAL VALUE-CONTENT REQUIREMENTS

Changes in regional value content level for automotive goods:

(1) Notwithstanding the regional value-content requirement set out in Schedule I, and except as otherwise provided in subsection (2), the regional value-content requirement for a good referred to in paragraph (a) or (b) is as follows:

(a) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 56 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 62.5 percent, in the case of

(i) a light-duty vehicle, and

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40, that is for use in a light-duty vehicle; and

(b) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 55 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 60 percent, in the case of

(i) a heavy-duty vehicle,

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40 that is for use in a heavy-duty vehicle, and

(iii) except in the case of a good referred to in paragraph (a)(ii) or provided for in any of subheadings 8482.10 through 8482.80, 8483.20 and 8483.30, a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use in a light-duty vehicle or a heavy-duty vehicle.

Regional value content level for motor vehicles produced in a new plant or in a retrofit plant:

(2) Notwithstanding the regional value-content requirement set out in Schedule I, the regional value-content requirement for a light-duty vehicle or a heavy-duty vehicle that is produced in a plant is as follows:

(a) not less than 50 percent for five years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler, if

(i) the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries,

(ii) the plant consists of, or includes, a new building in which the motor vehicle is assembled, and

(iii) the value of machinery that was never previously used for production, and that is used in the new building or buildings for the purposes of the complete motor vehicle assembly process with respect to that motor vehicle, is at least 90 percent of the value of all machinery used for purposes of that process; and

(b) not less than 50 percent for two years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler following a refit of that plant, if the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not assembled by the motor vehicle assembler in the plant before the refit.

Value of machinery in a new plant:

(3) For purposes of subsection (2)(a)(iii), the value of machinery shall be

(a) where the machinery was acquired by the producer of the motor vehicle from another person, the cost of that machinery that is recorded on the books of the producer;

(b) where the machinery was used previously by the producer of the motor vehicle in the production of another good, the cost of the machinery that is recorded on the books of the producer minus accumulated depreciation of that machinery that is recorded on those books; and

(c) where the machinery was produced by the producer of the good, the total cost incurred with respect to that machinery, calculated on the basis of the costs that are recorded on the books of the producer.

Averaging period for calculation of RVC for vehicles of new plant or refit plant:

(4) For purposes of calculating the regional value content of a motor vehicle referred to in subsection (2) that is in any one of the categories set out in subsection (7) that is chosen by the producer, the producer may file with the customs administration of the NAFTA country into

the territory of which vehicles in that category are to be imported an election to calculate the regional value content of such vehicles by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer with respect to all of such motor vehicles in the category chosen over

(i) the period beginning on the day on which the first prototype of the motor vehicle is produced and ending on the last day of the producer's first fiscal year that begins after the beginning of the period,

(ii) a fiscal year of the producer that starts after the period referred to in subparagraph (i) and ends on or before the end of the period referred to in subsection (2)(a) or (b), or

(iii) the period beginning on the first day of the producer's fiscal year that begins before the end of the period referred to in subsection (2)(a) or (b) and ending at the end of that period, and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required on document filed when choosing to average; timely filing:

(5) A choice made under subsection (4) shall

(a) state the category chosen by the producer and

(i) where the category referred to in subsection (7)(a) is chosen, the model name, model line, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(ii) where the category referred to in subsection (7)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the plant location at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (8);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) state whether the choice is with respect to a motor vehicle referred to in subsection (2)(a) or (b);

(g) be dated and signed by an authorized officer of the producer; and

(h) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

No rescission or modification permitted:

(6) A choice filed for the period referred to in subsection (4) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

Categories of motor vehicles for averaging:

(7) The categories referred to in subsection (4) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country.

(8) For purposes of subsection (4), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (7).

Period for averaging RVC of motor vehicles of new or refit plant:

(9) Where the period referred to in subsection (4) ends on a day other than the last day of the producer's fiscal year, the producer may, for purposes of section 11, make the choice referred to in that section with respect to

(a) the period beginning on the day following the end of that period and ending on the last day of that fiscal year; or

(b) the period beginning on the day following the end of that period and ending on the last day of the following full fiscal year.

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status:

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

PART VI

GENERAL PROVISIONS

SECTION 14.—ACCUMULATION

Option to determine origin of good by accumulating the production of a material with production of the good in which the material is used:

(1) Subject to subsections (2) and (4), for purposes of determining whether a good is an originating good, an exporter or producer of a good may choose to accumulate the production, by one or more producers in the territory of one or more of the NAFTA countries, of materials that are incorporated into that good so that the production of the materials shall be considered to have been performed by that exporter or producer.

Statement required; information as to net cost and value of non-originating materials from production of material if accumulating for regional value content requirement:

(2) Where a good is subject to a regional value-content requirement and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that

(a) states the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the net cost incurred by the producer of the material plus, where not included in the net cost incurred by the producer of the material, the costs referred to in sections 7(1)(c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of non-originating materials used by the producer of the material; or

(b) states any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

Accumulated production considered to be production of a single producer:

(3) For purposes of section 7(4), where a producer of the good chooses to accumulate the production of materials under subsection (1), that production shall be considered to be the production of the producer of the good.

(4) For purposes of this section,

(a) in order to accumulate the production of a material,

(i) where the good is subject to a regional value-content requirement, the producer of the good must have a statement described in subsection (2) that is signed by the producer of the material, and

(ii) where an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the NAFTA countries; and

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good.

Examples of accumulation of production:

(5) Each of the following examples is an "Example" as referred to in section 2(4).

EXAMPLE 1

Section 14(1):

Producer A, located in NAFTA country A, imports unfinished bearing rings provided for in subheading 8482.99 into NAFTA country A from a non-NAFTA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods. The net cost of the finished bearing rings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.15
Value of non-originating materials	0.75
Other product costs	0.35
Period costs (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the finished bearing rings, per unit	1.45
Excluded costs (included in period costs)	0.05
Net cost of the finished bearing rings, per unit	1.40

Producer A sells the finished bearing rings to Producer B who is located in NAFTA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to NAFTA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value-content requirement.

Situation A:

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A)	1.50
Other product costs	0.75
Period costs (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	2.90
Excluded costs (included in period costs)	0.05
Net cost of the bearings, per unit	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.50}{\$2.85} \times 100$$

$$= 47.4\%$$

Therefore, the bearings are non-originating goods.

Situation B:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in section 14(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.15)	$0.60
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75
Other product costs ($0.75 + $0.35)	1.10
Period costs (($0.15 + $0.15), (including $0.10 in excluded costs)	0.30
Other costs ($0.05 + $0.05)	0.10
Total cost of the bearings, per unit	2.85
Excluded costs (included in period costs)	0.10
Net cost of the bearings, per unit	2.75

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.75 - \$0.75}{\$2.75} \times 100$$

$$= 72.7\%$$

Therefore, the bearings are originating goods.

Situation C:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 – $0.75 = .65). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.65)	$1.10
Value of non-originating materials ($1.50 – $0.65)	0.85
Other product costs	0.75
Period costs (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	2.90
Excluded costs (included in period costs)	0.05
Net cost of the bearings, per unit	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$0.85}{\$2.85} \times 100$$

$$= 70.2\%$$

Therefore, the bearings are originating goods.

Situation D:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials ($1.50 – $0.35)	1.15
Other product costs ($0.75 +$0.35)	1.10
Period costs (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	2.90
Excluded costs (included in period costs)	0.05
Net cost of the bearings, per unit	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.15}{\$2.85} \times 100$$

$$= 59.7\%$$

Therefore, the bearings are originating goods.

EXAMPLE 2

Section 14(1):

Producer A, located in NAFTA country A, imports non-originating cotton, carded or combed, provided for in heading 5203 for use in the production of cotton yarn provided for in heading 5205. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 5205, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in NAFTA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 5208. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 5208, which is a change from any heading outside headings 5208 through 5212, except from certain headings, under which various yarns, including cotton yarn provided for in heading 5205, are classified.

Therefore, the woven fabric of cotton that Producer B produces from non-originating cotton yarn produced by Producer A is a non-originating good.

However, under section 14(1), if Producer B chooses to accumulate the production of Producer A, the production of Producer A would be considered to have been performed by Producer B. The rule for heading 5208, under which the cotton fabric is classified, does not exclude a change from heading 5203, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 5203 to the woven fabric of cotton provided for in heading 5208 would satisfy the applicable change of tariff classification for heading 5208. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in section 14(4)(a)(ii).

SECTION 15.–INABILITY TO PROVIDE SUFFICIENT INFORMATION

Supplier of material unable to provide information; beyond control of supplier; procedure to be followed by Customs:

(1) Where, during a verification of origin of a good, the person from whom a producer of the good acquired a material used in the production of that good is unable to provide the customs administration that is conducting the verification with sufficient information to substantiate that the material is an originating material or that the value of the material declared for purpose of calculating the regional value content of the good is accurate, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin or value of the material, consider the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that material that concluded that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(b) whether an independent auditor has confirmed the accuracy of

(i) any signed statement referred to in this Appendix with respect to the material,

(ii) the information that was used by the person from whom the producer acquired the material to substantiate whether the material is an originating material, or

(iii) the information submitted by the producer of the material with an application for an advance ruling where, on the basis of that information, the customs administration concluded that the material is an originating material or that the

value declared for the purpose of calculating the regional value content of the good is accurate;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical materials or similar materials produced by the producer of the material and determined that

(i) the identical materials or similar materials are originating materials, or

(ii) any signed statement referred to in this Appendix with respect to those identical materials or similar materials is accurate;

(d) whether the producer of the good has exercised due diligence to ensure that any signed statement that is referred to in this Appendix with respect to the material and that was provided by the person from whom the producer acquired the material is accurate;

(e) where the customs administration has access only to partial records of the person from whom the producer acquired the material, whether the records provide sufficient evidence to substantiate that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin or value of the material from the customs administration of the NAFTA country in the territory of which the person from whom the producer acquired the material was located; and

(g) whether the producer of the good, the person from whom the producer acquired the material or a representative of that person or producer agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the material.

"Reasons beyond control" of supplier:

(2) For purposes of subsection (1), "reasons beyond the control" of the person from whom the producer of the good acquired the material includes

(a) the bankruptcy of the person from whom the producer acquired the material or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the material is an originating material or the value of the material declared for the purpose of calculating the regional value content of the good;

(b) any other reason that results in partial or complete loss of records of that producer that the producer could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

Exporter or producer of good unable to provide information; reasons beyond control of exporter or producer; procedure to be followed by Customs:

(3) Where, during a verification of origin of a good, the exporter or producer of the good is unable to provide the customs administration conducting the verification with sufficient information to substantiate that the good is an originating good, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin of the good, consider the following factors:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that good that concluded that the good is an originating good;

(b) whether an independent auditor has confirmed the accuracy of an origin statement with respect to the good;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical goods or similar goods produced by the producer of the good and determined that the identical goods or similar goods are originating goods;

(d) where the customs administration has access only to partial records of the exporter or producer of the good, whether the records provide sufficient evidence to substantiate that the good is an originating good;

(e) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (d), relevant information regarding the determination of the origin of the good from the customs administration of the NAFTA country in the territory of which the exporter or producer of the good was located; or

(f) whether the exporter or producer of the good or a representative of that person agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the good.

"Reasons beyond control":

(4) For purposes of subsection (3), "reasons beyond the control" of the exporter or producer of the good includes

(a) the bankruptcy of the exporter or producer or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the good is an originating good;

(b) any other reason that results in partial or complete loss of records of that exporter or producer that that person could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

SECTION 16.—TRANSSHIPMENT

Effect of subsequent processing outside the territory of a NAFTA country; loss of originating good status:

(1) A good is not an originating good by reason of having undergone production occurring entirely in the territory of one or more of the NAFTA countries that would enable the good to qualify as an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a NAFTA country.

Transhipped good considered entirely non-originating:

(2) A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for purposes of this Appendix.

Exceptions for certain goods:

(3) Subsection (1) does not apply with respect to a good provided for in any of subheadings 8541.10 through 8541.60 and 8542.11 through 8542.80 where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to a subheading outside subheadings 8541.10 through 8542.90.

SECTION 17.—NON-QUALIFYING OPERATIONS

Mere dilution; production or pricing practice to circumvent the provisions of this Appendix:

17. A good is not an originating good merely by reason of

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Appendix.

SCHEDULE I

Schedule I shall be the text of Annex 401 to the Agreement.

SCHEDULE II

VALUE OF GOODS

Sec. 1. Definitions.

For purposes of this Schedule, unless otherwise stated:

"buyer" refers to a person who purchases a good from the producer;

"buying commissions" means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;

"producer" refers to the producer of the good being valued.

Sec. 2.

For purposes of Article 402(2) of the Agreement, as implemented by section 6(2) of this Appendix, the transaction value of a good shall be the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

Sec. 3.

(1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money; it may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.

(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities shall not be added to the price actually paid or payable.

(3) The transaction value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:

(a) charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good has been sold to the buyer; or

(b) duties and taxes paid in the country in which the buyer is located with respect to the good.

(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

Sec. 4.

(1) In determining the transaction value of a good, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable

(i) commissions and brokerage fees, except buying commissions,

(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) where the packaging materials and containers in which the good is packaged for retail sale are classified with the good under the Harmonized System, the value of the packaging materials and containers;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the good,

(ii) tools, dies, molds and similar indirect materials used in the production of the good,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition "indirect material" set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the good, and

(iv) engineering, development, artwork, design work, and plans and sketches necessary for the production of the good, regardless of where performed;

(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the NAFTA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsections (1)(a)(i) and (ii) shall be

(a) those amounts that are recorded on the books of the buyer, or

(b) where those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.

(6) The value of the packaging materials and containers referred to in subsection (1)(a)(iii) and the value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are imported from outside the territory of the NAFTA coun-

try in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) where the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) where the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) where the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the NAFTA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (7),

and shall include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer, to the extent that such costs are not included under paragraph (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(f) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(h) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the material, less the value of renewable scrap or by-product.

(7) For purposes of subsection (6)(d), the total cost of the packaging materials and containers referred to in subsection (1)(a)(iii) or the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packag-

ing materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII; and

(b) where the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the buyer, or

(b) where such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements shall be the cost of the lease as recorded on the books of the buyer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the good the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mould to be used in the production of the good and contracts with the producer to buy 10,000 units of that

good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mould over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only where that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the buyer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the buyer or the producer.

SCHEDULE III

UNACCEPTABLE TRANSACTION VALUE

Sec. 1. Definitions.

For purposes of this Schedule, unless otherwise stated

"buyer" refers to a person who purchases a good from the producer;

"customs administration" refers to the customs administration of the NAFTA country into whose territory the good being valued is imported; and

"producer" refers to the producer of the good being valued.

Sec. 2.

(1) There is no transaction value for a good where the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable where

(a) there are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or

payable cannot be made in accordance with section 4(1)(d) of Schedule II; or

(d) except as provided in section 3, the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The conditions or considerations referred to in subsection (2)(b) include the following circumstances:

(a) the producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that has been provided by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of subsection (2)(b), conditions or considerations relating to the production or marketing of the good shall not render the transaction value unacceptable, such as where the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 4(1) of Schedule II, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

Sec. 3.

(1) In determining whether the transaction value is unacceptable under section 2(2)(d), the fact that the producer and the buyer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the producer and the buyer did not influence the price actually paid or payable.

Where the customs administration has reasonable grounds for considering that the relationship between the producer and the buyer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the producer and the buyer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the producer and the buyer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the producer and the buyer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the producer and the buyer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the producer and the buyer, or it may already have detailed information concerning the relationship between the producer and the buyer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the producer and the buyer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the producer and the buyer organize their commercial relations and the way in which the price actually paid or payable for the good being valued was arrived at, in order to determine whether the relationship between the producer and the buyer influenced that price actually paid or payable. Where it can be shown that the producer and the buyer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the good had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the producer settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the buyer

and the producer. As another illustration, where it is shown that the price actually paid or payable for the good is adequate to ensure recovery of the total cost of producing the good plus a profit that is representative of the producer's overall profit realized over a representative period of time, such as on an annual basis, in sales of goods of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the buyer.

(4) In a sale between a producer and a buyer who are related persons, the transaction value shall be accepted and determined in accordance with section 2 of Schedule II wherever the producer demonstrates that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).

(5) The value to be used as a test value shall be the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.

(6) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 4(1)(b) of Schedule II and the costs incurred by the producer in sales to unrelated buyers that are not incurred by the producer in sales to a related person.

(7) The application of the test value referred to in subsection (4) shall be used at the initiative of the producer and shall be used only for comparison purposes to determine whether the transaction value of the good is acceptable. The test value shall not be used as the transaction value of that good.

(8) Subsection (4) provides an opportunity for the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration, and is therefore acceptable under subsections (1) and (4). Where the application of a test value under subsection (4) demonstrates that the transaction value of the good being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the producer and the buyer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates a test value referred to in subsection (4), the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(9) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical goods or similar goods closely approximates the transaction value of the good being valued. These factors include the nature of the good, the nature of the industry itself, the season in which the good is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable

standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of good could be un-acceptable, while a large difference in a case involving another type of good might be acceptable for the purposes of determining whether the transaction value closely approxi-mates a test value set out in subsection (4).

SCHEDULE IV

LIST OF TARIFF PROVISIONS FOR THE PURPOSES OF SECTION 9 OF THE APPENDIX

4009
4010.10
4011
4016.93.10
4016.99.30 and 4016.99.55
7007.11 and 7007.21
7009.10
8301.20
8407.31
8407.32
8407.33
8407.34.05, 8407.34.15 and 8407.34.25
8407.34.35, 8407.34.45 and 8407.34.55
8408.20
8409
8413.30
8414.59.30
8414.80.05
8415.81 through 8415.83
8421.39.40
8481.20, 8481.30 and 8481.80
8482.10 through 8482.80
8483.10 through 8483.40
8483.50
8501.10
8501.20
8501.31
8501.32.45
8507.20.40, 8507.30.40, 8507.40.40 and 8507.80.40
8511.30
8511.40
8511.50
8512.20

SCHEDULE IV—continued

LIST OF TARIFF PROVISIONS FOR THE PURPOSES OF SECTION 9 OF THE APPENDIX—continued

8512.40
8519.91
8527.21
8527.29
8536.50
8536.90
8537.10.30
8539.10
8539.21
8544.30
8706
8707
8708.10.30
8708.21
8708.29.20
8708.29.10
8708.29.15
8708.39
8708.40
8708.50
8708.60
8708.70.05, 8708.70.25 and 8708.70.45
8708.80
8708.91
8708.92
8708.93.15 and 8708.93.60
8708.94
8708.99.03, 8708.99.27 and 8708.99.55
8708.99.06, 8708.99.31 and 8708.99.58
8708.99.09, 8708.99.34 and 8708.99.61
8708.99.12, 8708.99.37 and 8708.99.64
8708.99.15, 8708.99.40 and 8708.99.67
8708.99.18, 8708.99.43 and 8708.99.70
8708.99.21, 8708.99.46 and 8708.99.73
8708.99.24, 8708.99.49 and 8708.99.80
9031.80
9032.89
9401.20

SCHEDULE V

LIST OF AUTOMOTIVE COMPONENTS AND MATERIALS FOR THE PURPOSES OF SECTION 10 OF THE APPENDIX

Item	Column I Automotive Components	Column II Listed Materials
1.	Engines provided for in heading 8407 or 8408	cast blocks, cast heads, fuel nozzles, fuel injector pumps, glow plugs, turbo chargers superchargers, electronic engine controls, intake manifolds, exhaust manifolds, intake valves, exhaust valves, crankshafts, camshafts, alternators, starters, air cleaner assemblies, pistons, connecting rods and assemblies made therefrom, rotor assemblies for rotary engines, flywheels (for manual transmissions), flexplates (for automatic transmissions), oil pans, oil pumps, pressure regulators, water pumps, crankshaft gears, camshaft gears, radiator assemblies, charge-air coolers.
2.	Gear boxes (transmissions) provided for in subheading 8708.40	(a) for manual transmissions: transmission cases and clutch housings; clutches; internal shifting mechanisms; gear sets synchronizers and shafts; and (b) for torque convertor type transmissions: transmission cases and convertor housings; torque convertor assemblies; gear sets and clutches; electronic transmission controls.

SCHEDULE VI

REGIONAL VALUE-CONTENT CALCULATION FOR CAMI

Sec. 1. Definitions.

In this Schedule,

"closed" means, with respect to a plant, a closure

(a) for purposes of re-tooling for a change in model line, or

(b) as a result of any event or circumstance (other than the imposition of antidumping duties or countervailing duties, or an interruption of operations resulting from a labor strike, lock-out, labor dispute, picketing or boycott of or by employees of CAMI Automotive, Inc. or General Motors of Canada Limited) that CAMI Automotive, Inc. or General Motors of Canada Limited could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials,

failure of utilities, or inability to obtain or a delay in obtaining raw materials, parts, fuel or utilities;

"GM" means General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico, S.A de C.V., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof;

"producer" means CAMI Automotive, Inc.

Sec. 2.

For purposes of section 11 of this Appendix, for purposes of determining the regional value content, in a fiscal year, of a motor vehicle of a class of motor vehicles or a model line produced by the producer in the territory of Canada and imported into the territory of the United States, the producer may elect to calculate the regional value content by

(a) calculating

(i) the sum of

(A) the net cost incurred by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 3 that is chosen by the producer, and

(B) the net cost incurred by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(ii) the sum of

(A) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 2.1 that is chosen by the producer, and

(B) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(b) using the sums referred to in paragraphs (a)(i) and (ii) as the net cost and the value of non-originating materials, respectively, in the calculation referred to in section 6(3) of this Appendix,

provided that

(c) at the beginning of the producer's fiscal year, General Motors of Canada Limited owns 50 percent or more of the voting common stock of the producer, and

(d) GM acquires 75 percent or more by unit of quantity of the class of motor vehicles or model line, as the case may be, that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

Sec. 3.

The categories referred to in clauses 2(a)(i)(A) and (ii)(A) are the following:

(a) the class of motor vehicles that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries; and

(b) the model line that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

Sec. 4.

Where GM does not satisfy the requirement set out in section 2(d), the producer may choose that the regional value content be calculated in accordance with section 2 only for those motor vehicles that are acquired by GM for distribution under the GEO marque or another GM marque.

Sec. 5.

(1) The producer may choose that the calculation referred to in section 2 be made over a period of two fiscal years where

(a) any plant operated by the producer or by General Motors of Canada Limited is closed for more than two consecutive months; and

(b) the motor vehicles of a category referred to in section 2.1, with respect to which the producer chooses that the regional value content be calculated in accordance with section 2, are produced in that plant.

(2) Subject to subsection (3), the period of two fiscal years referred to in subsection (1) corresponds to the fiscal year in which the plant is closed and, at the choice of the producer, the preceding or the subsequent fiscal year.

(3) Where the plant is closed for a period that spans two fiscal years, the calculation referred to in section 2 may be made only over those two fiscal years.

(4) Where the producer has chosen that the regional value content be calculated over two fiscal years under this section, the choice referred to in section 11(6) of this Appendix shall be filed not later than 10 days after the end of the period during which the plant is closed, or at such later time as the customs administration may accept.

Sec. 6.

For purposes of this Schedule, a motor vehicle producer shall be deemed to be GM where, as a result of an amalgamation, reorganization, division or similar transaction, that motor vehicle producer

(a) acquires all or substantially all of the assets used by GM, and

(b) directly or indirectly controls, or is controlled by, GM, or both that motor vehicle producer and any GM are controlled by the same person.

SCHEDULE VII
REASONABLE ALLOCATION OF COSTS

Sec. 1. Definitions.

For purposes of this Schedule,

"costs" means any costs that are included in total cost and that need to be allocated pursuant to sections 5(8), 6(11) and 7(6) and sections 7(12)(b)(ii) and 10(1)(a)(i) of this Appendix, section 4(7) of Schedule II and section 5(7) of Schedule VIII;

"discontinued operations" means a segment of a producer's business that has been discontinued;

"indirect overhead" means period costs and other costs;

"internal management purpose" means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement; and

"overhead" means costs, other than direct material costs and direct labor costs.

Sec. 2. Interpretation.

(1) In this Schedule, reference to "producer" shall, for purposes of section 4(7) of Schedule II, be read as a reference to "buyer".

(2) In this Schedule, reference to "good" shall,

(a) for purposes of section 6(14) of this Appendix, be read as a reference to "identical goods or similar goods, or any combination thereof";

(b) for purposes of section 7(6) of this Appendix, be read as a reference to "intermediate material";

(c) for purposes of section 7(12)(b)(ii) of this Appendix, be read as a reference to "packaging materials and containers";

(d) for purposes of section 11 of this Appendix, be read as a reference to "category of vehicles that is chosen pursuant to section 11(1) of this Appendix";

(e) for purposes of section 12 of this Appendix, be read as a reference to "category of goods chosen pursuant to section 12(1) of this Appendix";

(f) for purposes of section 13(4) of this Appendix, be read as a reference to "category of vehicles chosen pursuant to section 13(4) of this Appendix";

(g) for purposes of section 4(7) of Schedule II, be read as a reference to "packaging materials and containers or the elements"; and

(h) for purposes of section 5(7) of Schedule VIII, be read as a reference to "elements".

METHODS TO REASONABLY ALLOCATE COSTS

Sec. 3.

(1) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(2) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(3) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

Sec. 4.

Where costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated,

(a) with respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;

(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and

(c) with respect to overhead, on the basis of any of the following methods:

(i) the method set out in Addendum A, Addendum B or Addendum C,

(ii) a method based on a combination of the methods set out in Addenda A and B or Addenda A and C, and

(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

Sec. 5.

Any cost allocation method referred to in section 3 or 4 that is used by a producer for the purposes of this Appendix shall be used throughout the producer's fiscal year.

COSTS NOT REASONABLY ALLOCATED

Sec. 6.

The allocation to a good of any of the following is considered not to be reasonably allocated to the good:

(a) costs of a service provided by a producer of a good to another person where the service is not related to the good;
(b) gains or losses resulting from the disposition of a discontinued operation;
(c) costs relating to the cumulative effect of accounting changes; and
(d) gains or losses resulting from the sale of a capital asset of the producer.

Sec. 7.

Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

ADDENDUM A
COST RATIO METHOD

Calculation of Cost Ratio:

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer in accordance with the following formula:

$$CR = \frac{AB}{TAB}$$

where

CR is the cost ratio with respect to the good;

AB is the allocation base for the good; and

TAB is the total allocation base for all the goods produced by the producer.

Allocation to a Good of Costs included in Overhead:

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where

CAG is the costs allocated to the good;

CA is the costs to be allocated; and

CR is the cost ratio with respect to the good.

Excluded Costs:

Under section 6(11)(b) of this Appendix, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be subtracted from the costs allocated to the good.

Allocation Bases for Costs:

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:

Direct Labor Hours
Direct Labor Costs
Units Produced
Machine-hours
Sales Dollars or Pesos
Floor Space

"Examples":

The following examples illustrate the application of the cost ratio method to costs included in overhead.

EXAMPLE 1

Direct Labor Hours:

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 5,000 hours/8,000 hours = .625
Good B: 3,000 hours/8,000 hours = .375

Allocation of overhead to Good A and Good B:

Good A: $6,000,000 x .625 = $3,750,000
Good B: $6,000,000 x .375 = $2,250,000

EXAMPLE 2

Direct Labor Costs:

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor costs incurred in the production of Good A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: $50,000/$60,000 = .833
Good B: $10,000/$60,000 = .167

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 x .833 = $4,998,000
Good B: $6,000,000 x .167 = $1,002,000

EXAMPLE 3

Units Produced:

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 100,000 units/150,000 units = .667
Good B: 50,000 units/150,000 units = .333

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 x .667 = $4,002,000
Good B: $6,000,000 x .333 = $1,998,000

EXAMPLE 4

Machine-hours:

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 1,200 machine-hours/3,000 machine-hours = .40
Good B: 1,800 machine-hours/3,000 machine-hours = .60

Allocation of Machine-Related Overhead to Good A and Good B:

Good A: $6,000,000 x .40 = $2,400,000
Good B: $6,000,000 x .60 = $3,600,000

EXAMPLE 5

Sales Dollars or Pesos:

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

Total Sales Dollars for Good A and Good B:

Good A: $4,000 x 2,000 = $8,000,000
Good B: $3,000 x 200 = $600,000
Total Sales Dollars: $8,000,000 + $600,000 = $8,600,000

Calculation of the Ratios:

Good A: \$8,000,000/\$8,600,000 = .93
Good B: \$600,000/\$8,600,000 = .07

Allocation of Overhead to Good A and Good B:

Good A: \$6,000,000 x .93 = \$5,580,000
Good B: \$6,000,000 x .07 = \$420,000

EXAMPLE 6

Floor Space:

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is \$6,000,000.

Calculation of the Ratios:

Good A: 40,000 square feet/100,000 square feet = .40
Good B: 60,000 square feet/100,000 square feet = .60

Allocation of Overhead (Utilities) to Good A and Good B:

Good A: \$6,000,000 x .40 = \$2,400,000
Good B: \$6,000,000 x .60 = \$3,600,000

ADDENDUM B

DIRECT LABOR AND DIRECT MATERIAL RATIO METHOD

Calculation of Direct Labor and Direct Material Ratio:

For each good produced by the producer, a direct labor and direct material ratio is calculated in accordance with the following formula:

$$\text{DLDMR} = \frac{\text{DLC} + \text{DMC}}{\text{TDLC} + \text{TDMC}}$$

where

DLDMR	is the direct labor and direct material ratio for the good;
DLC	is the direct labor costs of the good;
DMC	is the direct material costs of the good;
TDLC	is the total direct labor costs of all goods produced by the producer; and
TDMC	is the total direct material costs of all goods produced by the producer.

Allocation of Overhead to a Good:

Overhead is allocated to a good in accordance with the following formula:

OAG = O x DLDMR

where

OAG is the overhead allocated to the good;

O is the overhead to be allocated; and

DLDMR is the direct labor and direct material ratio for the good.

Excluded Costs:

Under section 6(11)(b) of this Appendix, where excluded costs are included in overhead to be allocated to a good, the direct labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

"Examples":

EXAMPLE 1

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Totals	15	10	25

Overhead Allocated to Good A:

OAG (Good A) = O ($30) x DLDMR ($15/$25)
OAG (Good A) = $18.00

Overhead Allocated to Good B:

OAG (Good B) = O ($30) x DLDMR ($10/$25)
OAG (Good B) = $12.00

EXAMPLE 2

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is \$50 (including excluded costs (EC) of \$20). The other relevant costs are set out in the table of Example 1.

Overhead Allocated to Good A:

OAG (Good A) = [O (\$50) x DLDMR (\$15/\$25)]
– [EC (\$20) x DLDMR (\$15/\$25)]
OAG (Good A) = \$18.00

Overhead Allocated to Good B:

OAG (Good B) = [O (\$50) x DLDMR (\$10/\$25)]
– [EC (\$20) x DLDMR (\$10/\$25)]
OAG (Good B) = \$12.00

ADDENDUM C

DIRECT COST RATIO METHOD

Direct Overhead:

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

Indirect Overhead:

Indirect overhead is allocated on the basis of a direct cost ratio.

Calculation of Direct Cost Ratio:

For each good produced by the producer, a direct cost ratio is calculated in accordance with the following formula:

$$DCR = \frac{DLC + DMC + DO}{TDLC + TDMC + TDO}$$

where

DCR	is the direct cost ratio for the good;
DLC	is the direct labor costs of the good;
DMC	is the direct material costs of the good;
DO	is the direct overhead of the good;
TDLC	is the total direct labor costs of all goods produced by the producer;
TDMC	is the total direct material costs of all goods produced by the producer; and
TDO	is the total direct overhead of all goods produced by the producer;

Allocation of Indirect Overhead to a Good:

Indirect overhead is allocated to a good in accordance with the following formula:

IOAG = IO x DCR

where

IOAG	is the indirect overhead allocated to the good;
IO	is the indirect overhead of all goods produced by the producer; and
DCR	is the direct cost ratio of the good.

Excluded Costs:

Under section 6(11)(b) of this Appendix, where excluded costs are included in

(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and

(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

"Examples":

EXAMPLE 1

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Indirect overhead (IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Direct overhead	8	2	10
Totals	23	12	35

Indirect Overhead Allocated to Good A:

IOAG (Good A) = IO ($30) x DCR ($23/$35)
IOAG (Good A) = $19.71

Indirect Overhead Allocated to Good B:

IOAG (Good B) = IO ($30) x DCR ($12/$35)
IOAG (Good B) = $10.29

EXAMPLE 2

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer has chosen to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Indirect Overhead Allocated to Good A:

IOAG (Good A) = [IO ($50) X DCR ($23/$35)]
 – [EC ($20) x DCR ($23/$35)]
IOAG (Good A) = $19.72

Indirect Overhead Allocated to Good B:

IOAG (Good B) = [IO ($50) x DCR ($12/$35)]
 – [EC ($20) x DCR ($12/$35)]
IOAG (Good B) = $10.28

SCHEDULE VIII
VALUE OF MATERIALS

Sec. 1. Definitions.

For purposes of this Schedule, unless otherwise stated,

"buying commissions" means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

"customs administration" refers to the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported;

"materials of the same class or kind" means, with respect to materials being valued, materials that are within a group or range of materials that

(a) is produced by a particular industry or industry sector, and
(b) includes identical materials or similar materials;

"producer" refers to the producer who used the material in the production of a good that is subject to a regional value content requirement;

"seller" refers to a person who sells the material being valued to the producer.

Sec. 2.

(1) Except as provided under subsections (2) and (3), the transaction value of a material under Article 402(9)(a) of the Agreement, as implemented by section 7(1)(b) and sections 9(5) and 10(2) of this Appendix, shall be the price actually paid or payable for the material determined in accordance with section 4 and adjusted in accordance with section 5.

(2) There is no transaction value for a material where the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable where

(a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the producer of the good or the seller of the material is located,

(ii) limit the geographical area in which the material may be used, or

(iii) do not substantially affect the value of the material;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;

(c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 5(1)(d); and

(d) except as provided in section 3, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The conditions or considerations referred to in subsection (3)(b) include the following circumstances:

(a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;

(b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that has been provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of subsection (3)(b), conditions or considerations relating to the use of the material shall not render the transaction value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 5(1), the transaction value cannot be determined under the provisions of section 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is

mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

Sec. 3.

(1) In determining whether the transaction value is unacceptable under section 2(3)(d), the fact that the seller and the producer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the seller and the producer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the seller and the producer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the seller and the producer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the seller and the producer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the seller and the producer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the seller and the producer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the seller and the producer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the seller and the producer, or it may already have detailed information concerning the relationship between the seller and the producer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the seller and the producer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such fur-

ther information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the seller and the producer organize their commercial relations and the way in which the price actually paid or payable by that producer for the material being valued was arrived at, in order to determine whether the relationship between the seller and the producer influenced that price actually paid or payable. Where it can be shown that the seller and the producer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the material had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the seller settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the seller. For another illustration of this, where it is shown that the price actually paid or payable for the material is adequate to ensure recovery of the total cost of producing the material plus a profit that is representative of the seller's overall profit realized over a representative period of time, such as on an annual basis, in sales of materials of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the seller and the producer.

(4) In a sale between a seller and a producer who are related persons, the transaction value shall be accepted and determined in accordance with section 2(1), wherever the seller or the producer demonstrates that the transaction value of the material in that sale closely approximates one of the following test values that occurs at or about the same time as the sale and is chosen by the seller or the producer:

(a) the transaction value in sales to unrelated buyers of identical materials or similar materials, as determined in accordance with section 2(1);

(b) the value of identical materials or similar materials, as determined in accordance with section 9; or

(c) the value of identical materials or similar materials, as determined in accordance with section 10.

(5) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 5(1)(b) and the costs incurred by the seller in sales to unrelated buyers that are not incurred by the seller in sales by the seller to a related person.

(6) The application of a test value referred to in subsection (4) shall be used at the initiative of the seller, or at the initiative of the producer with the consent of the seller, and shall be used only for comparison purposes to determine whether the transaction value of the material is accept-

able. The test value shall not be used as the transaction value of that material.

(7) Subsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1). Where the application of a test value under subsection (4) demonstrates that the transaction value of the material being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the seller and the producer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates one of the test values determined under subsection (4), the seller or the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(8) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical materials or similar materials closely approximates the transaction value of the material being valued. These factors include the nature of the material, the nature of the industry itself, the season in which the material is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of material could be unacceptable, while a large difference in a case involving another type of material might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

Sec. 4.

(1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money: it may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 5, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value shall not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

Sec. 5.

(1) In determining the transaction value of the material, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, molds and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition "indirect material" set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches performed outside the territory of the NAFTA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the NAFTA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2(1).

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsection (1)(a) shall be those amounts that are recorded on the books of the producer.

(6) The value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are imported from outside the territory of the NAFTA country in which the seller is located, the customs value of the elements;

(b) where the producer, or a related person on behalf of the producer, purchases the elements from an unrelated person in the territory of the NAFTA country in which the seller is located, the price actually paid or payable for the elements;

(c) where the producer, or a related person on behalf of the producer, acquires the elements from an unrelated person in the territory of the NAFTA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person; or

(d) where the elements are produced by the producer, or by a related person, in the territory of the NAFTA country in which the seller is located, the total cost of the elements, determined in accordance with subsection (7),

and shall include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraph (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,

(f) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and

(h) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of renewable scrap or by-product.

(7) For the purposes of subsection (6)(d), the total cost of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are produced by the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII; and

(b) where the elements are produced by a person who is related to the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the producer, or

(b) where such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements shall be the cost of the lease that is recorded on the books of the producer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the material the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the material in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mould to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mould over 4,000 units

or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the producer or the seller.

Sec. 6.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), the value of the material, referred to Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part III of this Appendix, shall be the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value shall be used to determine the value of the material under this section.

Sec. 7.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part III of this Appendix, shall be the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest such value shall be used to determine the value of the material under this section.

Sec. 8.

If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6 or 7, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part III of this Appendix, shall be determined under section 9 or, when the value cannot be determined under that section,

under section 10 except that, at the request of the producer, the order of application of section 9 and 10 shall be reversed.

Sec. 9.

(1) Under this section, if identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part III of this Appendix, shall be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

(a) either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that NAFTA country, of materials of the same class or kind as the material being valued; and

(b) taxes, if included in the unit price, payable in the territory of that NAFTA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value shall, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the date the material being valued was received by the producer.

(3) The expression "unit price at which identical materials or similar materials are sold, in the greatest aggregate quantity" in subsection (1) means the price at which the greatest number of units is sold in sales between unrelated persons. For an illustration of this, materials are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	100	10 sales of 5 units 5 sales of 3 units	65
11–25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in section 5(1)(b), shall not be taken into account in establishing the unit price for the purposes of this section.

(5) The amount generally reflected for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole. The figure for the purposes of deducting an amount for profit and general expenses shall be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. Where the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses shall be based on relevant information other than that supplied by or on behalf of the producer.

(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.

(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, "materials of the same class or kind" includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the NAFTA country in which the producer is located.

(8) For the purposes of subsection (2), the earliest date shall be the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the NAFTA country in which the producer is located.

Sec. 10.

(1) Under this section, the value of a material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part III of this Appendix, shall be the sum of

(a) the cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,

(b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and

(c) an amount for profit and general expenses equal to that usually reflected in sales, in the territory of the NAFTA country in which the producer is located, by producers of materials of the same class or kind as the material being valued in the country in which the material is produced,

and shall include, to the extent they are not already included under paragraph (a) or (b) and where the elements are supplied directly or indirectly to the producer of the material being valued by the producer free of charge or at a reduced cost for use in the production of that material,

(d) the value of elements referred to in section 5(1)(b)(i), determined in accordance with section 5(6), and

(e) the value of elements referred to in section 5(1)(b)(ii) through (iv), determined in accordance with section 5(8) and reasonably allocated to the material in accordance with section 5(12).

(2) For purposes of subsections (1)(a) and (b), where the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in subsections (1)(a) and (b) with respect to the material being valued shall be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule VII.

(3) The amount for profit and general expenses referred to in subsection (1)(c) shall be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued in the country in which the material is produced. The information supplied shall be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. Where the material is produced in the territory of a NAFTA country, the information shall be prepared in accordance with the generally accepted accounting principles set out in the authorities listed for that NAFTA country in Schedule VI.

(4) For purposes of subsection (1)(c) and subsection (3), general expenses means the direct and indirect costs of producing and selling the material that are not included under subsections (1)(a) and (b).

(5) For purposes of subsection (3), the amount for profit and general expenses shall be taken as a whole. Where, in the information supplied by or on behalf of the producer of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. Where the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particu-

lar commercial circumstances, its actual profit and general expense figures shall be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is where a material was being launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(6) Where the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.

(7) Where a customs administration uses information other than that supplied by or on behalf of the producer of the material for the purposes of determining the value of a material under this section, the customs administration shall communicate to the producer, if that producer so requests, the source of such information, the data used and the calculations based upon such data, subject to the provisions on confidentiality under Article 507 of the Agreement, as implemented in each NAFTA country.

(8) Whether certain materials are of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

Sec. 11.

(1) Where there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the materials cannot be determined under sections 6 through 10, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part III of this Appendix, shall be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.

(2) The value of the material determined under this section shall not be determined on the basis of

(a) a valuation system which provides for the acceptance of the higher of two alternative values;
(b) a cost of production other than the value determined in accordance with section 10;
(c) minimum values;
(d) arbitrary or fictitious values,
(e) where the material is produced in the territory of the NAFTA country in which the producer is located, the price of the material for export from that territory; or
(f) where the material is imported, the price of the material for export to a country other than to the territory of the NAFTA country in which the producer is located.

(3) To the greatest extent possible, the value of the material determined under this section shall be based on the methods of valuation set out in sections 2 through 10, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 6, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 9 could be used. For another illustration, under section 7, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 9 could be used. For a further illustration, under section 9, the ninety days requirement could be administered flexibly.

SCHEDULE IX

METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD UNDER THE TRANSACTION VALUE METHOD

DEFINITIONS AND INTERPRETATION

Sec. 1. Definitions.

For purposes of this Schedule,

"FIFO method" means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of

non-originating materials used in the production of the good first shipped to the buyer of the good;

"identical materials" means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;

"LIFO method" means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

"materials inventory" means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good; and

"rolling average method" means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance with section 4, of the non-originating materials in materials inventory.

GENERAL

Sec. 2.

The methods for determining the value of non-originating materials that are identical materials and that are referred to in section 6(10) of this Appendix are the following:

(a) FIFO method;
(b) LIFO method; and
(c) rolling average method.

Sec. 3.

(1) Where a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good with respect to which the transaction value method has been chosen.

(2) Where a producer of a good produces the good in more than one plant, the method chosen by the producer shall be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

AVERAGE VALUE FOR ROLLING AVERAGE METHOD

Sec. 4.

(1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing

(a) the total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 7 of this Appendix,

by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

ADDENDUM

"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD UNDER THE TRANSACTION VALUE METHOD

The following "examples" are based on the figures set out in the table below and on the following assumptions:

(a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;
(b) one unit of Materials A is used to produce one unit of Good A;
(c) all other materials used in the production of Good A are originating materials;
(d) Good A is subject to a regional value-content requirement and the producer has chosen the transaction value method; and
(e) Good A is produced in a single plant.

	MATERIALS INVENTORY		SALES
	(Receipts of Materials A)		*(Shipments of Good A)*
Date (M/D/Y)	Quantity (units)	Unit cost*	Quantity (units)
01/01/94	200	$1.05	
01/03/94	1,000	1.00	
01/05/94	1,000	1.10	
01/08/94			500
01/09/94			500
01/10/94	1,000	1.05	
01/14/94			1,500
01/16/94	2,000	1.10	
01/18/94			1,500

* Unit cost is determined in accordance with section 7 of this Appendix.

EXAMPLE 1

FIFO method:

By applying the FIFO method:

(1) the 200 units of Materials A received on 01/01/94 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 unit x $1.05) + ($300 units x $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units x $1.00);

(3) the remaining 200 units of the 1,000 of Materials A received on 01/03/94 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit, and 300 units of the 1,000 Materials A received on 01/10/94 and valued at $1.05 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units x $1.00) + (1,000 units x $1.10) + (300 units x $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 x $1.05) + (800 x $1.10)].

EXAMPLE 2

LIFO method:

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units x $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 unit x $1.10);

(3) the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in

the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units x $1.05) + (500 units x $1.00)]; and

(4) 1,500 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units x $1.10).

EXAMPLE 3

Rolling average method:

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

MATERIALS INVENTORY

	Date (M/D/Y)	Quantity (Units)	Unit Cost*	Total value
Beginning inventory	01/01/94	200	$1.05	$210
Receipt	01/03/94	1,000	1.00	1,000
Average value		1,200	1.008	1,210
Receipt	01/05/94	1,000	1.10	1,100
Average value		2,200	1.05	2,310
Shipment	01/08/94	500	1.05	525
Average value		1,700	1.05	1,785
Shipment	01/09/94	500	1.05	525
Average value		1,200	1.05	1,260
Receipt	01/16/94	2,000	1.10	2,200
Average value		3,200	1.08	3,460

* Unit cost is determined in accordance with section 7 of this Appendix.

By applying the rolling average method:

(1) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/94 is considered to be $525 (500 units x $1.05); and

(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/94 is considered to be $525 (500 units x $1.05).

SCHEDULE X

INVENTORY MANAGEMENT METHODS

PART I

FUNGIBLE MATERIALS

DEFINITIONS AND INTERPRETATION

Sec. 1. Definitions.

For purposes of this Part,

"average method" means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;

"FIFO method" means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

"LIFO method" means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

"materials inventory" means,

(a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and

(b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;

"opening inventory" means the materials inventory at the time an inventory management method is chosen;

"origin identifier" means any mark that identifies fungible materials as originating materials or non-originating materials.

GENERAL

Sec. 2.

The inventory management methods for determining whether fungible materials referred to in section 7(14)(a) of this Appendix are originating materials are the following:

(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

Sec. 3.

Where a producer of a good or a person from whom the producer acquired the materials that are used in the production of the good chooses an inventory management method referred to in section 2, that method shall be used from the time the choice is made until the end of the fiscal year of the producer or person.

SPECIFIC IDENTIFICATION METHOD

Sec. 4.

(1) Except as otherwise provided under subsection (2), where the producer or person referred to in section 3 chooses the specific identification method, the producer or person shall physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.

(2) Where originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

AVERAGE METHOD

Sec. 5.

Where the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

Sec. 6.

(1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

Sec. 7.

(1) Where the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under sections 6(15), 11(1), (3) or (6), 12(1) or13(4) of this Appendix, the ratio is calculated with respect to that period by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that period.

(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

Sec. 8.

(1) Where the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing

(a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment,

by

(b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.

(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

Manner of Dealing With Opening Inventory

Sec. 9.

(1) Except as otherwise provided under subsections (2) and (3), where the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by

(a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;
(b) determining the origin of the fungible materials that make up those receipts; and
(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.

(2) Where the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.

(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

PART II

FUNGIBLE GOODS

Definitions and Interpretation

Sec. 10. Definitions.

For purposes of this Part,

"average method" means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 12, of originating goods and non-originating goods in finished goods inventory;

"FIFO method" means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

"finished goods inventory" means an inventory from which fungible goods are sold or otherwise transferred to another person;

"LIFO method" means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

"opening inventory" means the finished goods inventory at the time an inventory management method is chosen; and

"origin identifier" means any mark that identifies fungible goods as originating goods or non-originating goods.

GENERAL

Sec. 11.

The inventory management methods for determining whether fungible goods referred to in section 7(14)(b) of this Appendix are originating goods are the following:

(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

Sec. 12.

Where an exporter of a good or a person from whom the exporter acquired the good chooses an inventory management method referred to in section 11, that method shall be used from the time the choice is made until the end of the fiscal year of the exporter or person.

SPECIFIC IDENTIFICATION METHOD

Sec. 13.

(1) Except as provided under subsection (2), where the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person shall physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.

(2) Where originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

AVERAGE METHOD

Sec. 14.

(1) Where the exporter or person referred to in section 12 chooses the average method, the origin of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing

(a) the sum of

(i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in fin-

ished goods inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.

(2) The calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

MANNER OF DEALING WITH OPENING INVENTORY

Sec. 15.

(1) Except as otherwise provided under subsections (2) and (3), where the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;

(b) determining the origin of the fungible goods that make up those receipts; and

(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) Where the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

ADDENDUM A

"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE MATERIALS

The following "examples" are based on the figures set out in the table below and on the following assumptions:

(a) originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;

(b) one unit of Material A is used to produce one unit of Good A;

(c) Material A is only used in the production of Good A;
(d) all other materials used in the production of Good A are originating materials; and
(e) the producer of Good A exports all shipments of Good A to the territory of a NAFTA country.

MATERIALS INVENTORY			SALES
	(Receipts of Materials A)		(Shipments of Good A)
Date (M/D/Y)	Quantity (units)	Unit cost*	Quantity (units)
12/18/93	100 (O[1])	$1.00	
12/27/93	100 (N[2])	1.10	
01/01/94	200 (OI[3])		
01/01/94	1,000 (O)	1.00	
01/05/94	1,000 (N)	1.10	
01/10/94			100
01/10/94	1,000 (O)	1.05	
01/15/94			700
01/16/94	2,000 (N)	1.10	
01/20/94			1,000
01/23/94			900

*Unit cost is determined in accordance with section 7 of this Appendix.
[1]"O" denotes originating materials.
[2]"N" denotes non-originating materials.
[3]"OI" denotes opening inventory.

Example 1

FIFO method:

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) the 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/93 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/93 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units x $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Material A that were received in ma-

terials inventory on 01/05/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $660 (600 units x $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating materials used in the production of the those goods is considered to be $440 (400 units x $1.10).

EXAMPLE 2

LIFO method:

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, where originating Material A is used in the production of Good A, Good A is an originating good and, where non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94.

EXAMPLE 3

Average method:

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

		MATERIAL INVENTORY						SALES
		(Receipts of Material A)			*(Non-Originating Material)*			*(Shipments of Good A)*
	Date (M/D/Y)	Quantity (units)	Total value	Unit cost*	Quantity (units)	Total value	Ratio	Quantity (units)
Receipt	12/18/93	100(O[1])	100	1.00				
Receipt	12/27/93	100(N[2])	110	1.10	100	110.00		
New Avg Inv Value		200(OI[3])	210	1.05	100	105.00	0.50	
Receipt	01/01/94	1,000(O[1])	1,000	1.00	—	—		
New Avg Inv Value		1,200(N[2])	1,210	1.01	100	101.00	0.08	
Receipt	01/05/94	1,000	1,100	1.10	1,000	1,100.00		
New Avg Inv Value		2,200	2,310	1.05	1,100	1,155.00	0.50	
Shipment	01/10/94	(100)	(105)	1.05	(50)	(52.50)		100
Receipt	01/10/94	1,000(O[1])	1,050	1.05	—	—		
New Avg Inv Value		3,100	3,255	1.05	1,050	1,102.50	0.34	
Shipment	01/15/94	(700)	(735)	1.05	(238)	(249.90)		700
Receipt	01/16/94	2,000(N[2])	2,200	1.10	2,000	2,200.00		
New Avg Inv Value		4,400	4,720	1.07	2,816	3,013.20	0.64	
Shipment	1/20/94	(1,000)	(1,070)	1.07	(640)	(684.80)		1000
Shipment	01/23/94	(900)	(963)	1.07	(576)	(616.32)		900
New Avg Inv Value		2,500	2,687	1.07	1,600	1,712.00	0.64	

* Unit cost is determined in accordance with section 7 of this Appendix.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

By applying the average method:

(1) before the shipment of the 100 units of Material A on 01/10/94, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units); based on those ratios, 50 units (100 units x .50) of originating Material A and 50 units (100 units x .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be \$52.50 [100 units x \$1.05 (average unit value) x .50]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units x .50) are considered to be originating materials and 1,050 units (2,100 units x .50) are considered to be non-originating materials;

(2) before the shipment of the 700 units of Good A on 01/15/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units

of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units); based on those ratios, 462 units (700 units x .66) of originating Material A and 238 units (700 units x .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units x $1.05 (average unit value) x 34%]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units x .66) are considered to be originating materials and 816 units (2,400 units x .34) are considered to be non-originating materials;

(3) before the shipment of the 1,000 units of Material A on 01/20/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units); based on those ratios, 360 units (1,000 units x .36) of originating Material A and 640 units (1,000 units x .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $684.80 [1,000 units x $1.07 (average unit value) x 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units x .36) are considered to be originating materials and 2,176 units (3,400 units x .64) are considered to be non-originating materials;

(4) before the shipment of the 900 units of Good A on 01/23/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units; based on those ratios, 324 units (900 units x .36) of originating Material A and 576 units (900 units x .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units x $1.07 (average unit value) x 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units x .36) are considered to be originating materials and 1,600 units (2,500 units x .64) are considered to be non-originating materials.

EXAMPLE 4

Average method:

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under section 6(15)(a) of this Appendix to deter-

mine the regional value content of Good A. By applying the average method:

the ratio of units of originating Material A to total units of Material A in materials inventory for January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,091 units (2,700 units x .404) of originating Material A and 1,609 units (2,700 units–1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 1994; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/ $5,200 (units of Material A in materials inventory) = $1.07 (average unit value) x (1–.404)] or $1,728 ($0.64 x 2,700 units); and that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 1994: 1,010 units (2,500 units x .404) are considered to be originating goods and 1,490 units (2,500 units – 1,010 units) are considered to be non-originating goods.

ADDENDUM B

"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE GOODS

The following "examples" are based on the figures set out in the table below and on the assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

	FINISHED GOODS INVENTORY	SALES
Date (M/D/Y)	*(Receipts of Goods A)* Quantity (units)	*(Shipments of Good A)* Quantity (units)
12/18/93	100 (O[1])	
12/27/93	100 (N[2])	
01/01/94	200 (OI[3])	
01/01/94	1,000 (O)	
01/05/94	1,000 (N)	
01/10/94		100
01/10/94	1,000 (O)	
01/15/94		700
01/16/94	2,000 (N)	
01/20/94	1,000	
01/23/94	900	

1"O" denotes originating goods

2"N" denotes non-originating goods

3"OI" denotes opening inventory

EXAMPLE 1

FIFO method:

By applying the FIFO method:

(1) the 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/93 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/93 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 900 units of Good A shipped on 01/23/94.

EXAMPLE 2

LIFO method:

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 900 units of Good A shipped on 01/23/94.

EXAMPLE 3

Average method:

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 1994. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 1994.

By applying the average method:

the ratio of originating goods to all goods in finished goods inventory for the month of January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,212 units (3,000 units x .404) of Good A shipped in January 1994 are considered to be originating goods and 1,788 units (3,000 units–1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 1994: 1,010 units (2,500 units x .404) are considered to be originating goods and 1,490 units (2,500 units–1,010 units) are considered to be non-originating goods.

SCHEDULE XI

METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS

Definitions and Interpretation

Sec. 1. Definitions.

For purposes of this Schedule,

"fixed-rate contract" means a loan contract, instalment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

"linear interpolation" means, with respect to the yield on federal government debt obligations, the application of the following mathematical formula:

$$A + [((B-A) \times (E-D)) / (C-D)]$$

where

A is the yield on federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the yield on federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule; "payment schedule" means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

"variable-rate contract" means a loan contract, instalment purchase contract or other financing agreement in which the interest rate is

adjusted at intervals during the life of the contract or agreement in accordance with its terms;

"weighted average principal maturity" means, with respect to fixed-rate contracts and variable-rate contracts, the numbers of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated; and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, where that amount is the mid-point between two such numbers, to the greater of those two numbers;

"weighted principal payment" means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

"yield on federal government debt obligations" means

(a) in the case of a producer located in Canada, the yield for federal government debt obligations set out in the Bank of Canada's *Weekly Financial Statistics*

(i) where the interest rate is adjusted at intervals of less than one year, under the title "Treasury Bills", and

(ii)in any other case, under the title "Selected Government of Canada benchmark bond yields",

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos,* published by the Banco de Mexico under the

title "*Certificados de la Tesoreria de la Federacion*" for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) where the interest rate is adjusted at intervals of less than one year, under the title "U.S. government securities, Treasury bills, Secondary market", and

(ii) in any other case, under the title "U.S. Government Securities, Treasury constant maturities",

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

GENERAL

Sec. 2.

For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract shall be compared to the yield on federal government debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

ADDENDUM

"EXAMPLE" ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A FIXED-RATE CONTRACT

The following example is based on the figures set out in the table below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a fixed-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year on the declining principal balance;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;

(d) there are no federal government debt obligations that have maturities equal to the 6 year weighted average principal maturity of the contract; and

(e) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5 and 7 year maturities, and the yields on them are 4.7 percent and 5.0 percent, respectively.

Years of loan	Principal balance [1]	Interest payment [2]	Principal payment [3]	Payment schedule	Weighted principal payment [4]
1	$924,132.04	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	843,712.00	55,447.92	80,420.04	135,867.96	160,840.08
3	758,466.76	50,622.72	85,245.24	135,867.96	255,735.72
4	668,106.81	45,508.01	90,359.95	135,867.96	361,439.82
5	572,325.26	40,086.41	95,781.55	135,867.96	478,907.76
6	470,796.81	34,339.52	101,528.44	135,867.96	609,170.67
7	363,176.66	28,247.81	107,620.15	135,867.96	753,341.06
8	249,099.30	21,790.60	114,077.36	135,867.96	912,618.88
9	128,177.30	14,945.96	120,922.00	135,867.96	1,088,298.02
10	(0.00)	7,690.66	128,177.32	135.867.96	1,281,773.22
					$5,977,993.19

Weighted Average Principal Maturity:
$5,977,993.19 / $1,000,000 = 5.977993 or 6 years[5]

[1]The principal balance represents the loan balance at the end of each full year the loan is in effect and is caluculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2]Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 percent.

[3]Principal payments are caluclated by subtracting the current year's interest payments from the annual payment schedule amount.

[4]The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5]The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

By applying the above method,

(1) the weighted average principal maturity of the payment schedule under the 6 percent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 percent and 5.0 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 percent. This number is calculated as follows:

$$4.7 + [((5.0-4.7) \times (6-5)) / (7-5)]$$
$$= 4.7 + 0.15$$
$$= 4.85\%; \text{ and}$$

(3) the producer's contract interest rate of 6 percent is within 700 basis points of the 4.85 percent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition "non-allowable interest costs".

"EXAMPLE" ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A VARIABLE-RATE CONTRACT

The following example is based on the figures set out in the tables below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a variable-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year for the first two years and 8 percent per year for the next two years on the principal balance, with rates adjusted each two years after that;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;

(d) there are no federal government debt obligations that have maturities equal to the 1.9 year weighted average principal maturity of the first two years of the contract;

(e) there are no federal government debt obligations that have maturities equal to the 1.9 year weighted average principal maturity of the third and fourth years of the contract; and

(f) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1 and 2 year maturities, and the yields on them are 3.0 percent and 3.5 percent respectively.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	1,848,264.08
						$1,924,132.04

Weighted Average Principal Maturity:

$1,924,132.04 / $1,000,000 = 1.92413204 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;

(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

3.0 + [((3.5–3.0) x (1.9–1.0)) / (2.0–1.0)] = 3.0 + 0.45 = 3.45%; and

(3) the producer's contract rate of 6 percent for the first two years of the loan is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9 year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition "non-allowable interest costs".

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	
3	843,712.01	8.00	67,496.96	79,321.38	146,818.34	$79,321.38
4	764,390.62	8.00	61,151,25	85,667.09	146,818.34	1,528,781.24
						$1,608,102.62

Weighted Average Principal Maturity:

$1,608,102.62 / $843,712.01 § 1.905985 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;

(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1 and 2 year maturities, and the yields on them are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

3.0 + [((3.5–3.0) x (1.9–1.0)) / (2.0–1.0)]
= 3.0 + 0.45
= 3.45%

(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 percent is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9 year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition "non-allowable interest costs".

SCHEDULE XII

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

Sec. 1.

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

Sec. 2.

For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) with respect to the territory of Canada, *The Canadian Institute of Chartered Accountants Handbook,* as updated from time to time;

(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados,* issued by the *Instituto Mexicano de Contadores P#blicos A.C. (IMCP),* including the *boletines complementarios,* as updated from time to time; and

(c) with respect to the territory of the United States,

(i) the following publications of the American Institute of Certified Public Accountants (AICPA), as updated from time to time:

(A) *AICPA Professional Standards,*

(B) *Committee on Accounting Procedure Accounting Research Bulletins,*

(C) *Accounting Principles Board Opinions and Statements,*

(D) *APB Accounting and Auditing Guides,*

(E) *AICPA Statements of Position, and*

(F) *AICPA Issues Papers and Practice Bulletins,*

(ii) the following publications of the Financial Accounting Standards Board (FASB), as updated from time to time:

(A) *FASB Accounting Standards and Interpretations,*

(B) *FASB Technical Bulletins, and*

(C) *FASB Concepts Statements.*

PART 191 – DRAWBACK

1. The general authority citation for Part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * * * *

2. Section 191.0 is amended by adding a sentence at the end to read as follows:

§ 191.0 Scope.

* * * Additional drawback provisions relating to the North American Free Trade Agreement are contained in subpart E of part 181 of this chapter.

GEORGE J. WEISE,
Commissioner of Customs.

Approved: December 16, 1993.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 30, 1993 (58 FR 69460)]

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19 CFR Parts 4, 24, 122, 123, and 134

(T.D. 94–2)

RIN 1515–AB30

PAY REFORM FOR CUSTOMS INSPECTIONAL SERVICES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to implement those provisions of the Omnibus Budget Reconciliation Act of 1993 concerning certain pay reforms applicable to Customs inspectional services. These regulations implement, in part, a new and exclusive compensation and pay schedule for Customs Officers who provide inspectional services. The compensation and pay schedule is applicable to work performed on regularly-scheduled Sundays, Federal holidays, and at night, where the majority of the hours worked occur during specific hours, as well as to work performed on an overtime and callback basis.

Further, the regulations subject this compensation and pay to the applicable fiscal year pay cap established by Congress and prevent abuses in the assignment of callback work and overtime, as well as in the payment of commuting time compensation. Also, certain language and legal citation changes are made to the Customs Regulations to reflect similar statutory changes. Regulations implementing other aspects of the pay reform provisions will be issued by the Office of Personnel Management and Customs at a later date.

DATES: Interim rules are effective January 1, 1994. Comments must be received on or before February 28, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kevin Cummings, Office of Workforce Effectiveness and Development (202) 927–1391.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As employees of the principal border enforcement agency of the United States, Customs Officers enforce some 600 laws for 60 agencies while facilitating the flow of merchandise in international commerce. Customs Officers protect American industry by safeguarding trade agreements, public health and safety, and intellectual property rights; protect the revenue; and interdict narcotics, contraband, and other illegal importations. To respond to changing trade trends, Customs Officers are continually called upon to increase their level of service, usually by working overtime.

The nature of Customs inspectional overtime services is unique in the Federal Government. For Customs Officers providing such services, the overtime is mandatory, regularly recurring, and routinely performed under the most physically and mentally demanding conditions. These conditions routinely include activities such as confronting the criminal element, climbing aboard vessels, breathing carbon monoxide fumes on the international border traffic lanes, crawling inside cargo containers which reach temperatures in excess of 120 degrees Fahrenheit in the summer, monitoring the bowel movements of a suspected narcotics swallower, examining hazardous material, and exposing oneself to blood-borne pathogens. Further, the vast majority of this overtime is performed at times and on days when other Federal employees normally do not work: at night, i.e., between the hours of 5: 00 p.m. and 8: 00 a.m., and on Sundays and holidays.

THE PRESENT OVERTIME COMPENSATION LAW (THE 1911 ACT)

Customs Officers who perform inspectional services after normal working hours of a port-work in excess of a 40-hour week or 8-hour

day, Monday through Saturday, 8: 00 a.m. through 5: 00 p.m. – are currently compensated under the provisions of § 5 of the Act of February 13, 1911 (the 1911 Act) (19 U.S.C. 261 and 267). The 1911 Act compensates such services at a rate that is twice the officer's hourly rate of base pay (double-time) and provides for certain minimum hour guarantees that, in some instances, bear no relationship to the hours actually worked. Further, under the provisions of the 1911 Act, overtime earnings are not considered in pension calculations, which discourages Customs Officers from retiring because their retirement annuities are disproportionate to their total actual earnings.

Other statutory provisions that relate to compensation for inspectional services are 19 U.S.C. 1450, which pertains to the unlading of vessels after the regular hours of a port, and 19 U.S.C. 58c(f)(3), which pertains to the disposition of user fees for reimbursable inspectional overtime services.

The regulations implementing these overtime pay provisions are found in Part 24 of the Customs Regulations (19 CFR Part 24); other references to overtime pay are found in Parts 4, 122, 123, and 134 of the Customs Regulations (19 CFR Parts 4, 122, 123, and 134). The primary provision pertaining to overtime services and pay in Part 24 is § 24.16, but that provision does not provide compensation or pay for night differential or other premium pay. In Parts 4, 122, 123, and 134, certain sections reference reimbursable inspectional services as being performed at night, which only includes the hours between 5: 00 p.m. and 8: 00 a.m.

Customs Officer Pay Reform (the 1993 Act)

Today, because of the phenomenal growth in international trade, some ports of entry are routinely open 24 hours a day, 7 days a week. And although performing inspectional services after normal working hours carries unique burdens and risks, which merit a higher rate of compensation than is otherwise provided under the provisions of the Federal Employees Pay Act (FEPA) (5 U.S.C. 5542), the U.S. Customs Service subscribes to the principle that Customs Officers' compensation for overtime and work on Sundays and holidays should be directly related to the number of hours actually worked.

Due to inequities that developed under the provisions of the 1911 Act, Congress passed the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (139 Cong.Rec. H5883, August 4, 1993), Subchapter D, Part II of which pertains to Customs Officer Pay Reform (the 1993 Act). In general, while the amendments retain the basic double-time compensation rate for Customs Officers performing overtime services, the three sections of Part II (§§ 13811–13813) impact Customs Officers' pay and compensation in the following way. Section 13811 creates a new and exclusive compensation and pay schedule for Customs Officers providing inspectional services after normal working hours, and requires the Secretary of the Treasury to prevent certain abuses pertaining to overtime assignments. Section 13812 allows overtime compensation to be included in the calculation of Federal retirement annuities for Customs

Officers, up to an amount equal to 50 percent of the applicable statutory pay limitation, and authorize foreign language proficiency awards. Section 13813 makes certain adjustments concerning reimbursements from the Customs User Fee Account.

Section 13811

Section 13811 of the 1993 Act amends 19 U.S.C. 261, 267, and 1450 (and repeals 19 U.S.C. 1451a) to create a new and exclusive compensation arrangement for Customs Officers who perform inspectional overtime services, including work performed on a callback basis. However, this section also restricts the amount of overtime compensation payable to actual overtime hours worked, and treats certain callback duty as being not less than two hours of work in duration and provides limited additional compensation (three hours of pay) for certain commuting time.

This section also authorizes the payment of newly-created premium pay differentials (pay in excess of base pay) for certain shiftwork performed between the hours of 3: 00 p.m. and 8: 00 a.m. (15% and 20%, depending on when the majority of regularly-scheduled hours are worked), and work performed on Federal holidays (double-time pay) and Sundays (time-and-a-half pay), but further provides that this premium pay will not be treated as constituting overtime pay or compensation for any purpose. This section also limits the amount of overtime compensation and premium pay a Customs Officer can earn in a year, by including both in the applicable fiscal year pay limitation, and makes this compensation and pay schedule exclusive, so that a Customs Officer who receives overtime compensation or premium pay under the new legislation may not receive pay or other compensation for that work under any other provision of law.

Section 13811 also requires the Secretary of the Treasury to prevent the disproportionately more frequent assignment of overtime work to Customs Officers who are near to retirement, and the abuse of callback work assignments and commuting time compensation. In addition, this section limits the applicability of the new compensation and pay schedule by defining eligible "Customs Officers" as those performing functions meeting the position description of Customs Inspectors and Canine Enforcement Officers, as provided by the Office of Personnel Management. Customs Employees other than Customs Officers who perform overtime services will continue to be paid for such services under the provisions of FEPA, as provided at 19 CFR 24.17.Further, this section authorizes Customs to change the administrative workweek to include Sunday, changes the overtime computation rules, deletes the provisions of 19 U.S.C. 1451a, which pertain to compensation for inspectional services payable by the United States, defines the term "holiday" (broadened to include those declared by Executive Orders), and makes certain other conforming changes to 19 U.S.C. 1450, which pertains to the unlading of vessels after the regular duty hours of a port, *i.e.*, correct the phrase "at night" to read "during overtime hours."

Thus, under the provisions of § 13811, overtime compensation or premium pay differentials will be paid to Customs Officers performing inspectional services as follows:

(1) For work performed in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day, overtime compensation will be paid at an hourly rate of pay that is equal to 2 times the hourly rate of the officer's basic pay (not including any premium pay);

(2) For overtime work performed on a callback basis, a Customs Officer may be entitled to: (a) pay for a minimum of two hours of work regardless of the time actually worked; and, (b) commute compensation in an amount equal to three times the hourly rate of the officer's basic pay (not including any premium pay);

(3) For regularly-scheduled work performed between the hours of 3 p.m. and 8 a.m., premium pay will be paid based on differentials of 15 percent and/or 20 percent, depending on when the majority of the regularly-scheduled shift work occurs;

(4) For regularly-scheduled work performed on Sundays, premium pay will be paid based on a differential of 50 percent of the hourly rate of base pay for hours worked, and;

(5) For regularly-scheduled work performed on holidays, premium pay will be paid based on a differential of 100 percent of the hourly rate of base pay for hours worked.

SECTIONS 13812 AND 13813

Sections 13812 and 13813 of the Customs Officer Pay Reform legislation are not covered in this document. Section 13812 amends 5 U.S.C. 8331(3) to provide for the inclusion of certain overtime earnings, up to 50 percent of the applicable fiscal year pay limitation, in the calculation of retirement benefits, and to authorize foreign language proficiency cash awards. The document that will implement the provisions of this section will be prepared by the Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement Policy Division. Section 13813 amends § 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) to provide for overtime compensation and premium pay reimbursements from the Customs User Fee account, which is not a regulatory matter.

CHANGES TO REGULATIONS

As the provisions of § 13811 of the 1993 Act impact on the Customs Regulations, the following sections of the Customs Regulations must be amended: §§ 4.30, 24.16, 24.17, 24.18, 122.38, 123.8, and 134.55. In § 4.30, paragraph (g) references the license to unlade vessels "at night," which under the 1911 Act meant between the hours of 5 p.m. and 8 a.m. Under the 1993 Act, however, reimbursable inspectional services may be performed at any time during a day. Accordingly, this section is amended by deleting the limiting time frame for overtime compensation; the section is so amended by substituting the phrase "during overtime hours" for the phrase "at night." The provisions of §§ 122.38 and

123.8 are similarly amended to refer to "during overtime hours" instead of "at night."

Section 24.16 is revised, in part, to reflect the new and exclusive overtime compensation and premium pay provisions of the 1993 Act, applicable only to those Customs Officers performing inspectional services; however, paragraphs (a) and (c) are retained, for the most part, without change. Since § 24.16 now has a restricted application, § 24.17 is amended and revised to apply to Customs employees performing other reimbursable services that will continue to be paid for such services under the provisions of the FEPA.

In § 24.18, the legal citation for § 5 of the Act of February 13, 1911, is amended by adding § 261, to reflect the current amendment to both 19 U.S.C. 267 and 261. In § 134.55, paragraph (b)(2) refers to Customs Officers and employees and overtime compensation within the context of § 24.16 only. To make it clear that only Customs Officers performing reimbursable overtime inspectional services are eligible to receive overtime compensation and premium pay under the provisions of § 24.16 and that Customs employees performing other reimbursable services will be compensated under the provisions of the FEPA, a reference to § 24.17 is added, as this section provides for compensation for such reimbursable overtime services.

Work Assignment Priorities

In an effort to address Congressional concerns regarding the abuse of callback work assignments and commuting time compensation, and the disproportionately more frequent assignment of overtime work to Customs Officers who are near to retirement, Customs has identified three work assignment priorities which Customs managers will follow in the assignment of regularly- scheduled and overtime work: (1) alignment of staff with the Customs workload, (2) equalization of Customs Officer's overtime earnings within participating groups, and (3) assessment of the least cost to the agency or other interested parties. These priorities are established and contained in § 24.16(d).

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with § 552 of the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b)) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4: 30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th St., NW, 4th floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Although public comments are solicited by this document, pursuant to the provisions of 5 U.S.C. 553(a)(2), public notice is inapplicable to

this interim regulation because it is a matter relating to agency management and personnel; the regulation implements compensation and management changes applicable to Customs inspectional personnel mandated by statute. Furthermore, because the effective date for these changes is statutory, pursuant to 5 U.S.C. 553(d)(3), good cause exists for dispensing with the requirement for a delayed effective date. Since this action is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Harbors, Imports, Maritime carriers, Merchandise, Passenger vessels, Reporting and recordkeeping requirements, Seamen, Vessels, Yachts.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Wages.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Bonds, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 134

Country of origin, Customs duties and inspection, Labeling, Marking, Packaging and containers.

Amendments to the Regulations

For the reasons stated above, Title 19, Chapter 1, parts 4, 24, 122, 123, and 134 of the Customs Regulations (19 CFR parts 4, 24, 122, 123, and 134) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1433, 1446, 1448, 1450–1454, 1490;

* * * * * * *

2. In § 4.30, paragraph (g) is amended by removing the words "at night" and adding, in their place, the words "during overtime hours".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 is revised, in part, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 261, 267, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624; 31 U.S.C. 9701, unless otherwise noted.

* * * * * * *

Section 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;
Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

* * * * * * *

2. In § 24.16:
a. the section heading is revised;
b. paragraph (a) is amended by removing the third sentence and adding, in its place, a new sentence;
c. paragraph (b) is revised;
d. paragraphs (d) through (h) are revised; and
e. paragraphs (i) through (k) are removed.
The additions and revisions read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for Customs officers; rate of compensation.

(a) *General.* * * * Customs Officers entitled to overtime compensation and premium pay, pursuant to the provisions of the Customs Officer Pay Reform legislation (19 U.S.C. 261 and 267, as amended), shall not receive pay or other compensation for that work under any other provision of law. * * *

(b) *Definitions.* For purposes of this section, the following words and phrases have the meanings indicated:

(1) "The Act" refers to Part II, Subchapter D of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66.

(2) "Administrative workweek" means a period of seven consecutive calendar days beginning Sunday and continuing through the following Saturday.

(3) "Base pay" means the rate of pay fixed by law or administrative action for the position held by the Customs Officer.

(4) "Callback" means the irregular or occasional overtime work performed by a Customs Officer either on a day when work was not regularly scheduled for that officer or which begins at least one hour after the end of the officer's regularly-scheduled tour of duty and ends at least one hour before the beginning of the following regularly-scheduled assignment and requires the officer to return to a place of work.

(5) "Commute compensation" means that compensation a Customs Officer is entitled to for returning to work, under certain conditions, to perform an overtime work assignment. Commute compensation shall be deemed overtime compensation and is includable for Federal retirement benefit purposes.

(6) "Continuous assignment" means the grouping of multiple overtime assignments, performed by the same Customs Officer(s), which are separated by periods of non-work, into a single unit for computation of pay purposes.

(7) "Customs Officer" means only those individuals assigned to position descriptions entitled "Customs Inspector," "Supervisory Customs Inspector," "Canine Enforcement Officer," or "Supervisory Canine Enforcement Officer."

(8) "Fiscal year pay cap" refers to the statutory maximum, in effect for the year involved, in overtime and premium pay a Customs Officer shall receive in that fiscal year. This aggregate limit may be waived by the Commissioner of Customs or his/her designee in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

(9) "Holiday" means any day designated as a holiday by a Federal statute or declared by an Executive order.

(10) "Intermittent employee" is a non-full-time employee who does not have a regularly-scheduled tour of duty.

(11)"Majority of hours", within the context of night work differentials, means more than half of the hours of the daily regularly-scheduled tour of duty.

(12) "Night work" means regularly-scheduled work performed by a Customs Officer on tours of duty, in which a majority of the hours worked occur between the hours of 3:00 p.m. and 8:00 a.m.

(13) "Overtime pay" means that compensation given to a Customs Officer in excess of the officer's base pay for performing officially-assigned work in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day, which may include commute compensation as defined at paragraph (b)(5) of this section. Overtime pay, within the limits prescribed by the Act, is includable for Federal retirement benefit purposes.

(14) "Participating group" means an identifiable set of Customs Officers whose overtime and commute compensation earnings are consid-

ered in total and apart from those of other Customs Officers for equalization averaging purposes.

(15) "Premium pay differential" means that pay given to a Customs Officer in excess of the officer's base pay for work on holidays, Sundays and at night. Premium pay is not includable for Federal retirement benefit purposes.

(16) "Regularly-scheduled administrative workweek" means, for a full-time employee, the 40 hour period within an administrative workweek within which the employee is regularly scheduled to work, exclusive of any overtime; for a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

* * * * * * *

(d) *Work Assignment Priorities.* The establishment of regularly-scheduled administrative tours of duty and assignments of Customs Officers to overtime work under this section shall be made in accordance with the following priorities, listed below in priority order:

(1) *Alignment.* Tours of duty should be aligned with the Customs workload.

(2) *Equalization.* Performing assigned overtime work is a condition of employment for Customs Officers. The overtime pay and commute compensation earnings of all Customs Officers within a designated participating group shall be equalized based upon the earnings range described in this paragraph. Unless operational considerations dictate otherwise, Customs Officers shall not be assigned to overtime if their total overtime earnings exceed the average overtime earnings of their participating group by an amount that is equal to 5 percent of the fiscal year pay cap. Customs Officers shall be required to work assigned overtime if their total overtime earnings are less than the average overtime earnings of their participating group by an amount that is equal to 5 percent of the fiscal year pay cap unless operational considerations dictate otherwise or the overtime pay for the assignment would result in the Customs Officer exceeding the fiscal year pay cap. The agency may consider new employees, or employees who return to their duty station after an extended absence, or employees who are entering a participating group, to have obtained the average overtime earnings of that group for equalization averaging purposes.

(3) *Least Cost.* All work assignments should be made in a manner which minimizes the cost to the government or party in interest. Decisions, including, but not limited to, what hours should be covered by a tour of duty or whether an assignment should be treated as continuous assignment or subject to commute compensation, should be based on least cost considerations. However, base pay comparison of eligible employees shall not be used in the determination of staffing assignments.

(e) *Overtime Pay.*

(1) A Customs Officer who is officially assigned to perform work in excess of the 40 hours in the officer's regularly-scheduled administrative

workweek or in excess of 8 hours in a day shall be compensated for such overtime work performed at 2 times the hourly rate of the officer's base pay, including any locality pay, but not including any premium pay differentials for holiday, Sunday, or night work.

(2) The computation of the amount of overtime worked by a Customs Officer is subject to the following conditions:

(i) *Overtime that is less than one hour.* A quarter of an hour shall be the smallest fraction of an hour used for paying overtime under this subpart. When work is performed in other than the full quarter hour, seven minutes or less shall be rounded down and eight minutes or more shall be rounded up and the Customs Officer shall be paid accordingly.

(ii) *Absence during overtime.* Except as expressly authorized by statute, regulation, or court order (i.e., military leave, court leave, continuation of pay under the workers compensation law, and back pay awards), a Customs Officer shall be paid for overtime work only when the officer reports for the work assignment.

(f) *Special provisions relating to overtime work on a callback basis.*

(1) *Minimum duration and callback requirements.* Any work for which overtime pay is authorized and for which the Customs Officer is required to return to a place of work shall be treated as being at least 2 hours in duration, but only if such work begins at least 1 hour after the end of any previous regularly-scheduled work assignment and ends at least 1 hour before the beginning of the following regularly-scheduled work assignment. An unpaid meal period shall not be considered a break in service for purposes of callback.

(2) *Commute compensation—Eligibility.* A Customs Officer shall be compensated for overtime when the officer is called back and officially assigned to perform work that:

(i) Is in excess of the 40 hours in the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day;

(ii) Begins at least 1 hour after the end of any previous regularly-scheduled work assignment;

(iii) Commences more than 2 hours prior to the start of the officer's next regularly-scheduled work assignment;

(iv) Ends at least 1 hour before the beginning of the officer's next regularly-scheduled work assignment; and,

(v) Commences less than 16 hours after the officer's last regularly-scheduled work assignment. The 16 hours shall be calculated from the end of the Customs Officer's last regularly-scheduled work assignment.

(3) *Commute compensation—Amount.* Commute compensation under this section shall be in an amount equal to 3 times the hourly rate of the Customs Officer's base pay for a one hour period, which includes applicable locality pay, but does not include any premium pay differentials for holiday, Sunday or night work. The Customs Officer shall be entitled to this amount for an eligible commute regardless of the actual commute time. However, an unpaid meal period shall not be considered a break in service for purposes of commute compensation. In addition, to prevent

the inappropriate payment of commute compensation, a Customs Officer who is officially assigned to perform overtime work, which is scheduled to begin within 1 hour of the end of the officer's regularly-scheduled tour of duty, shall be held in a continuous overtime pay status from the time the officer's regularly-scheduled tour of duty ends until the end of the assignment.

(4) *Maximum Compensation for Multiple Assignments.* If a Customs Officer is assigned to perform more than one overtime assignment, in which he is required to return to a place of work more than once in order to complete the assignment, and otherwise satisfies the callback requirements of paragraph (f)(1) of this section, then the officer shall be entitled to commute compensation each time the officer returns to the place of work provided that each assignment commences less than 16 hours after the officer's last regularly-scheduled work assignment. However, in no case shall the compensation be greater than if all assignments were treated as one continuous callback assignment.

(g) *Premium pay differentials.* Premium pay differentials may only be paid for non-overtime work performed on holidays, Sundays, or, at night (work performed, in whole or in part, between the hours of 3: 00 p.m. and 8: 00 a.m.). A Customs Officer shall receive payment for only one of the differentials for any one given period of work. The order of precedence for the payment of premium pay differentials is holidays, Sundays, and night work.

(1) *Holiday differential.* A Customs Officer who performs any regularly-scheduled work on a holiday shall receive pay for that work at the officer's hourly rate of base pay, including locality pay as authorized, plus premium pay amounting to 100 percent of that base rate. Holiday pay shall only be paid for the time worked. Intermittent employees are not entitled to holiday differentials.

(i) When a holiday is designated by a calendar date, for example, January 1, July 4, November 11, or December 25, the holiday will be observed on that date regardless of Saturdays and Sundays. Customs Officers who perform regularly-scheduled, non-overtime, tours of duty on those days shall be paid the holiday differential. Holidays not designated by a specific calendar date, such as President's Day (the third Monday in February), shall be observed on that date, and Customs Officers who perform regularly-scheduled, non-overtime, work on those days shall be paid the holiday differential.

(ii) Inauguration Day (January 20 of each fourth year after 1965), is a legal public holiday for the purpose of the Act. Customs Officers whose duty locations are in the District of Columbia, or Montgomery and Prince Georges County in Maryland, or Arlington and Fairfax Counties in Virginia, or in the cities of Alexandria and Falls Church in Virginia, who perform regularly-scheduled, non-overtime, work on that day shall be paid the holiday differential. When Inauguration Day falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is the legal public holiday.

(iii) If a legal holiday falls on a Customs Officer's regularly-scheduled day off, the officer shall receive a holiday "in lieu of" that day. Holidays "in lieu of" shall not be granted for Inauguration Day or for Federal holidays declared by Executive Order. A Customs Officer who works on an "in lieu of" holiday shall be paid the holiday differential.

(iv) If a Customs Officer is assigned to a regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of the holiday – for example, a tour of duty starting at 8 p.m. the day prior to the holiday through 4 a.m. on the holiday, and another tour of duty starting at 8 p.m. on the holiday through 4 a.m. on the day following the holiday – the management official in charge of assigning work shall designate one of the tours of duty as the officer's holiday shift and the officer shall receive holiday differential for work performed during the entire period of the designated holiday shift. The Customs Officer shall not receive holiday differential for any of the work performed on the tour of duty which has not been designated as the holiday shift but will be eligible for Sunday or night differential as appropriate.

(v) Customs Officers who are regularly scheduled, but not required, to work on a holiday shall receive their hourly rate of base pay for that 8-hour tour plus any Sunday or night differential they would have received had the day not been designated as a holiday. To receive holiday pay under this paragraph, the Customs Officer must be in a pay status (at work or on paid leave), either the last work day before the holiday or the first work day following the holiday.

(2) *Sunday differential.* A Customs Officer who is regularly scheduled to work on a Sunday that is not a Federal holiday shall receive pay for work performed at the officer's hourly rate of base pay, including locality pay as authorized, plus a premium pay of 50 percent of that hourly rate of base pay for the work performed. The 50 percent differential shall not be applicable to overtime work performed on a Sunday. A Customs Officer whose regularly-scheduled work occurs in part on a Sunday, that is not a Federal holiday, and in part on the preceding or following day, shall receive a premium of 50 percent of the officer's hourly rate of base pay for the hours of work which are performed between 12: 01 a.m. and 12 Midnight on Sunday. Intermittent employees are not entitled to Sunday differentials.

(3) *Night work differentials.* A Customs Officer shall receive a night premium pay differential for work performed during the officer's regularly-scheduled administrative workweek, including locality pay as authorized, but shall not receive a night premium pay differential for work performed during overtime assignments. When all or the majority of the hours of a Customs Officer's regularly-scheduled work occur between 3 p.m. and 8 a.m., the officer shall receive a night differential premium for all the hours worked during the assignment. Intermittent employees are not entitled to night differentials.

(i) *3 p.m. to Midnight.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 3 p.m. and 12 Midnight, the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for all the hours worked.

(ii) *11 p.m. to 8 a.m.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 11 p.m. and 8 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 20 percent of that hourly rate of base pay for all the hours worked.

(iii) *7:30 p.m. to 3:30 a.m. Shift.* If the regularly-scheduled shift of a Customs Officer is 7:30 p.m. to 3:30 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for the work performed between 7:30 p.m. and 11:30 p.m. and 20 percent of that hourly rate of base pay for the work performed between 11:30 p.m. and 3:30 a.m.

(iv) *Work Scheduled During Two Differential Periods.* A Customs Officer shall only be paid one night differential rate per regularly-scheduled shift, except as provided for in paragraph (iii) above. A Customs Officer whose regularly-scheduled work occurs during two separate differential periods shall receive the night differential premium rate which applies to the majority of hours scheduled.

(v) *Night Work Which Occurs in Part on a Sunday.* When a Customs Officer's regularly-scheduled shift occurs in part on a Sunday, the officer shall receive Sunday differential pay for those hours of the work which are performed during the 24 hour period of the Sunday, and the night differential pay for those hours which do not fall on the Sunday. For example, a Customs Officer who is assigned and works a shift which starts at 8 p.m. Sunday and ends at 4 a.m. Monday, shall receive 4 hours of Sunday premium pay and 4 hours of night pay. The night differential pay shall be calculated based on the rate applicable to the particular tour of duty.

(h) *Limitations.* Total payments for overtime/commute, and differentials for holiday, Sunday, and night work that a Customs Officer is paid shall not exceed any applicable fiscal year pay cap established by Congress. The Commissioner of Customs or the Commissioner's designee may waive this limitation in individual cases to prevent excessive costs or to meet emergency requirements of the Customs Service. However, compensation awarded to a Customs Officer for work not performed, which includes overtime awards during military leave or court leave, continuation of pay under workers compensation law, and awards made in accordance with back pay settlements, shall not be applied to any applicable pay cap calculations.

3. In § 24.17, the words "officer or" or "officers or" are removed, wherever they appear.

4. Section 24.17 is further amended by:

a. revising the section heading;

b. removing the word "officer" in the first sentence of paragraph (d) introductory text and adding, in its place, the word "employee";

c. removing the word "officer" in the first sentence of paragraph (d)(1) and adding, in its place, the word "employee";

d. removing the words "services of a Customs employee temporarily assigned to act as a Customs officer" in the second sentence of paragraph(d)(1) and adding, in their place, the words "such services";

e. removing the word "officer" in the first sentence of (d)(3) and adding, in its place, the word "employee"; and,

The revision reads as follows:

§ 24.17 Reimbursable services of Customs employees.

* * * * * * *

PART 122—AIR COMMERCE REGULATIONS

1.The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644,; 49 U.S.C.App. 1509.

§ 122.38 [Amended]

2. In § 122.38, paragraph (a)(2) is amended by removing the words "at night" and adding, in their place, the words "during overtime hours" in the parenthetical matter at the end of the sentence.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * * * *

§ 123.8 [Amended]

2. In § 123.8, paragraph (a) is amended by removing the words "at night" and adding, in their place, the words "during overtime hours" in the second sentence.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is amended to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

§ 134.55 [Amended]

2. In § 134.55, paragraph (b)(2) is amended by adding the reference "or § 24.17" after the reference to "§ 24.16".

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: December 17, 1993.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 28, 1993, 58 FR 68520]

U.S. Customs Service

General Notice

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1–1994)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of November 1993 follow. The last notice was published in the CUSTOMS BULLETIN on December 8, 1993.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C., 20229.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, (202) 482–6960.

Dated: December 21, 1993.

JOHN F. ATWOOD,
Chief,
Intellectual Property Rights Branch.

The list of recordations follows:

12/13/93
22:43:35

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN NOVEMBER 1993

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DETAIL

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COP9300388	19931101	20131101	UNIQUE FINE TABLE LAMP DESIGN	PEI-CHEN JENNIE CHIANG	N
COP9300389	19931104	20131104	GRAVE IMAGES #3	ROCKET DOG STUDIO	N
COP9300390	19931105	20131105	AUTHENTHIC SOUTHWESTERN DAISY WHEEL SILVER SONCHO WATCH	OUTWEST DESIGN LTD.	N
COP9300391	19931105	20131105	CRICKIT SAND PAINTING WATCH	OUTWEST DESIGN	N
COP9300392	19931105	20131105	EAGLE DANCER SAND PAINTING WATCH	OUTWEST DESIGN	N
COP9300393	19931105	20131105	FEATHER SUN FACE SAND PAINTING WATCH	OUTWEST DESIGN	N
COP9300394	19931105	20131105	FLUTED WATCH CASE	OUTWEST DESIGN	N
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COP9300397	19931105	20131105	SCALLOPED STAMPED CONCHO WATCH CASE	OUTWEST DESIGN	N
COP9300398	19931105	20131105	SCALLOPED STAMPED HEART WATCH CASE	OUTWEST DESIGN	N
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COP9300404	19931123	20131123	137-1 FOOTBALL BOY	ANJORDEN FASHION DESIGN CORP.	N
COP9300405	19931123	20131123	G-137 FOOTBALL KIDS	ANJORDEN FASHION DESIGN CORP.	N
COP9300406	19931123	20131123	M-73 EMBROIDERY	ANJORDEN FASHION DESIGN CORP.	N
COP9300407	19931123	20131123	M-50 EMBROIDERY	ANJORDEN FASHION DESIGN CORP.	N
COP9300408	19931123	20131123	G-135 HELICOPTER PILOT	ANJORDEN FASHION DESIGN CORP.	N
COP9300409	19931123	20131123	G-96 HAPPY DOG	ANJORDEN FASHION DESIGN CORP.	N
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22:43:35 IPR RECORDATIONS ADDED IN NOVEMBER 1993 DETAIL

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TMK9300900	19931123	19960911	ONE A DAY	MILES, INC.	N
TMK9300901	19931123	20000404	ONE A DAY (STYLIZED LETTERING)	MILES, INC.	N
TMK9300902	19931123	20010721	GLUCOSTIX	MILES, INC.	N
TMK9300903	19931123	20081025	MILES & DESIGN	MILES, INC.	N
TMK9300904	19931123	20010608	BONNIE INT'L	BONNIE INTERNATIONAL	N
TMK9300905	19931123	20030706	BEAR CREEK OUTFITTERS	SHELTER ISLAND, INC.	N
TMK9300906	19931123	20021124	COOLIT	ETM ENGINEERS TOOL MANUFACTURING	N
TMK9300907	19931126	19990619	ROYAL FAMILY	FIELDCREST CANNON, INC.	N
TMK9300908	19931126	19991120	ROYAL FAMILY	FIELDCREST CANNON, INC.	N

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U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN NOVEMBER 1993

PAGE 3
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	REG
TMK9300909	19931126	20061118	MONTICELLO	FIELDCREST CANNON, INC.	N
TMK9300910	19931126	19960508	ROYAL VELVET	FIELDCREST CANNON, INC.	N
TMK9300911	19931126	20080123	PEER (STYLIZED)	PEER BEARING COMPANY	N
TMK9300912	19931126	20071019	PEER	PEER BEARING COMPANY	N

SUBTOTAL RECORDATION TYPE 70

TOTAL RECORDATIONS ADDED THIS MONTH 99

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 93-235)

PULTON CHAIN CO., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91-08-00579

(Dated December 14, 1993)

AMENDED JUDGMENT

RESTANI, *Judge:* This case having been submitted for decision and the Court, after deliberation, having rendered a decision therein; now, in conformity with that decision,

IT IS HEREBY ORDERED: that the court affirms the results of the remand determination rendered in compliance with Slip Op. 93-202, issued herein. Plaintiff's dumping margin for the period of April 1, 1981—March 31, 1992 shall be 5.22%. Plaintiff's dumping margin for the period April 1, 1982—March 31, 1983 shall be 5.45%, as determined by the Secretary.

(Slip Op. 93-236)

PEG BANDAGE, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 87-12-01184 and 87-12-01184-S

[Defendant's motion for summary judgment granted in part, denied in part; plaintiff's cross-motion for partial summary judgment granted in part, denied in part; judgment entered for plaintiff].

(Dated December 15, 1993)

Rode & Qualey, (John S. Rode and *R. Brian Burke),* for plaintiff.

Frank W. Hunger, Assistant Attorney General, *Joseph I. Liebman,* Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, *(Nancy M. Frieden), Steven Berke,* United States Customs Service, of counsel, for defendant.

MEMORANDUM OPINION

GOLDBERG, *Judge:* Plaintiff contests Customs' classification of elastic bandages under Item 386.50, Tariff Schedules of the United States

("TSUS"). Plaintiff seeks partial duty-free treatment for its imported merchandise under either Item 806.20, or, alternatively, Item 807.00, TSUS. Defendant moves for summary judgment on both of plaintiff's claims. Plaintiff objects, and cross-moves for partial summary judgment seeking an order recognizing that: (1) all of its protests covering the entries at issue in this case were timely filed; and (2) it has satisfied all regulatory requirements for entry under Item 806.20 and Item 807.00, in accordance with Headnote 1, Schedule 8, TSUS.

Background

Plaintiff Peg Bandage, Inc. ("Peg") is a wholly-owned subsidiary of Becton Dickinson, Inc., and is the manufacturer and importer of elastic "ACE" and ACE-type bandages. These bandages consist of woven cotton or polyester yarns covering elastic fibers of spandex or rubber.

Production of the elastic bandages at issue in this case began at Peg's facility in Puerto Rico, where the initial processing included: winding (the transfer of yarn from cones to spools); covering (surrounding continuous spandex or rubber elastic fibers with cotton or polyester thread); warping (the transfer of covered material to warp beams [i.e. large spools]); weaving (the transfer of material to weaving machines, where it is woven together to create bandages); dyeing (with a coloring and softening solution); and cutting to length. Consolidated and Amended Complaint ("Complaint") paragraph 5. At this point Peg exported the unsewn bandages to Haiti, where the ends were sewn to prevent unraveling. The sewn bandages were then rolled and clipped; some were marked with the ACE logo and other information, while others were shrink-wrapped in cellophane. The finished bandages were then shipped to U.S. Customs territory. Complaint paragraph 7.

On May 27, 1983, Peg filed with the U.S. Customs Service ("Customs") a request for a ruling on the tariff classification of the imported bandages, contending that the merchandise was appropriately classified under Item 806.20, TSUS. On September 9, 1983, Customs Ruled that the elastic bandages did not meet the requirements of 806.20 classification; instead, it held that polyester-based bandages were properly classified under Item 389.62, TSUS and that cotton-based bandages were properly classified under Item 386.50, TSUS. On July 13, 1984, Peg filed a request for reconsideration of this ruling. Customs denied this request on June 3, 1985. Complaint paragraphs 11–13. As a result, Peg filed five protests covering Customs' classification of thirty-one separate entries of elastic bandages under Item 386.50, TSUS.[1] Complaint paragraph 14. These entries occurred between January 1984 and July 1985.[2] Each of Peg's protests sought Item 806.20 treatment for the imported bandages, and each was denied. Complaint paragraphs 18–19.

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[1] Protest numbers 4909–4–000084 and 4909–4–000085 were filed on August 23, 1984; protest number 4904–4–000244 was filed on December 6, 1984; protest number 4909–7–000100 was filed on September 2, 1987; protest number 4909–89–000037 was filed on March 28, 1989. Complaint paragraphs 15–17.

[2] Plaintiff's Memorandum in Opposition to the Defendant's Motion for Summary Judgment and in Support of Plaintiff's Cross-Motion for Partial Summary Judgment ("Pl.'s Brief"), Exhibit F.

Peg then filed three summonses contesting Customs' denial of its five protests.[3] Complaint paragraph 20. These three actions were subsequently consolidated by order of this court. *Peg Bandage, Inc. v. United States,* 16 CIT ____, Slip. Op. 92–63 (May 5, 1992).

Discussion

Summary judgment is warranted when, based upon the "pleadings, depositions, answers to interrogatories, * * * admissions on file, * * * [and] affidavits, if any," the court concludes that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Rule 56(d), Rules of the Court of International Trade. The mere existence of some factual disputes will not defeat a properly supported motion for summary judgment. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247–48 (1986). In order to succeed, the party opposing summary judgment must "designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett,* 477 U.S. 317, 324 (1986) (quoting Fed. R. Civ. P. 56(e)); *International Cargo & Sur. Ins. Co. v. United States,* 15 CIT 541, 542–43, 779 F. Supp. 174, 176 (1991). In contrast, the burden on the moving party "may be discharged by * * * pointing out to the [court] that there is an absence of evidence to support the [opposing] party's case." *Celotex,* 477 U.S. at 325; *see Sweats Fashions, Inc. v. Pannill Knitting Co.,* 833 F.2d 1560, 1563 (Fed. Cir. 1987). Customs' classification is presumed to be correct, and the burden of proving otherwise rests with the party challenging that decision. 28 U.S.C. § 2639(a) (1) (1988).

Peg can defeat the government's motion for summary judgment by showing there are genuine issues of material fact regarding the proper classification of its elastic bandages under the TSUS. Alternatively, in the absence of genuine issues of material fact, the government's motion can be denied if, on the evidence presented, the court deems that Peg is entitled to judgment as a matter of law. Though the government is entitled to its presumption, this court must independently verify the correctness of Customs' classification. *Jarvis Clark Co. v. United States,* 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878 (1984). Furthermore, despite Peg's failure to cross-move for summary judgment on either of its proposed classifications, the court may nevertheless enter judgment in Peg's favor *sua sponte.* The only prerequisite to entering judgment if favor of a party *sua sponte* is that the losing party be on notice that it need present all of its evidence regarding the issue(s) disposed of via summary disposition. *Celotex,* 477 U.S. at 326.

A motion for summary judgment is essentially a two-part statement by the moving party, that, as to those claim(s) addressed in its motion: (1) there are no triable issues involved; and (2) the moving party is entitled to judgment as a matter of law. The moving party is necessarily af-

[3] *Peg Bandage, Inc. v. United States,* No. 87–12–01184, contests Customs' denial of protest numbers 4909–4–000084 and 4909–4–000085; *Peg Bandage, Inc. v. United States,* No. 89–10–00552, contests Customs' denial of protest numbers 4904–4–000244 and 4909–7–000100; *Peg Bandage, Inc. v. United States,* No. 90–02–00072, contests Customs' denial of protest number 4909–89–000037.

forded an opportunity to present all of its evidence in order to establish a complete lack of evidentiary support for the contrary position taken by the opposing party; indeed, this is the burden the moving party must meet in order to succeed on its motion. By moving for summary disposition, therefore, a party is afforded the requisite notice which enables a court to enter judgment in favor of the non-moving party sua sponte on those claim(s) raised in the summary judgment motion. See Celotex, 477 U.S. at 326.

A. JURISDICTION

Peg contests Customs' denial of its protests pursuant to 19 U.S.C. § 1515 (1988). The court's jurisdiction is based upon 28 U.S.C. § 1581(a) (1988). In order for the court to properly exercise jurisdiction over a protest denied, that protest must have been filed within ninety days after, but not before, notice of liquidation or reliquidation. 19 U.S.C. § 1514(c) (2) (A) (1988). This requirement is strictly construed. *Atari Caribe v. United States,* 16 CIT ____, ____, 799 F. Supp. 99, 102 (1992). Notice of liquidation is made via a bulletin notice that is posted in the customhouse at the place of entry; such notice is deemed dated as of the date of posting. 19 C.F.R. § 159.9.

As an initial matter, Peg argues that because the government failed to raise the issue of untimely protests in its Memorandum of Law in Support of the Government's Motion for Summary Judgment, the government conceded this argument and is thus estopped from subsequently raising it as a defense. This position is simply untenable. Objections to the court's jurisdiction may be raised at any time during the pendency of the action. *Schering Corp. v. United States,* 67 CCPA 83, 88, 626 F.2d 162, 167 (1980). Once raised, the burden shifts to the opposing party to show by competent proof that jurisdiction exists. *McNutt v. General Motors Acceptance Corp.,* 298 U.S. 178, 189 (1936).

Peg also submits notices of denial of its protests in support of its cross motion. These notices indicate that the District Director of Customs in San Juan, Puerto Rico, denied Peg's protests on their merits, and not on the basis of untimeliness. As a result, Peg argues that the presumption of regularity that attaches to the performance of official acts supports the conclusion that these records, which existed at the time the protests were processed, establish their timeliness as to all entries. The court recognizes that public officials are presumed to perform their duties in the manner required of them by law. *Olavarria & Co. v. United States,* 47 CCPA 65, 66 (1960). This presumption, however, is insufficient support for Peg's conclusion in light of additional evidence to the contrary. The regulation specify that only posted bulletin notices constitute legal evidence of liquidations. 19 C.F.R. § 159.9(c), (d). Thus, the court must examine Customs' records of bulletin postings for disposition of this issue.

The government concedes that Customs has destroyed all bulletin notices of liquidation covering the entries in this case. Nevertheless, the government asserts two jurisdictional defenses. First, the government

argues that protest no. 4909–7–000100, filed on September 2, 1987, is premature as to entry nos. 84–449275–1 and 85–565749–1. Peg submits courtesy notices of liquidation to establish that Customs gave written notice that these entries were *scheduled* for liquidation on July 17, 1987, and June 26, 1987, respectively. Pl.'s Brief, Exhibit A. In response, the government submits the affidavit of Joseph A. DiSalvo, a Supervisory Customs Liquidator. The DiSalvo affidavit refers to computer printouts from Customs' Automated Commercial System ("ACS") database. The ACS records indicate that entry no. 84–449275–1 was first liquidated on April 15, 1988, while entry no. 85–565749–1 was liquidated on September 30, 1988.

According to Mr. DiSalvo, Customs will occasionally decide not to liquidate an entry that has been scheduled for liquidation; rather, the liquidation will be "unset" *(i.e.* unscheduled). DiSalvo Affidavit paragraphs 8, 12. The ACS database was coded in such a manner as to not allow the unsetting of a liquidation on or after the scheduled posting date. *Id.* Paragraph 8. Because Customs mails a courtesy notice of liquidation approximately two weeks prior to the bulletin's scheduled posting date, it is possible that a liquidation may be unset prior to posting of the bulletin but after the courtesy notice is mailed. *Id.* Paragraph 12. Upon posting of the bulletin notice, Customs records the liquidation date in its ACS entry Archive File. *Id.* Paragraph 7.

Peg has failed to establish the timeliness of its protests as to entry nos. 84–449275–1 and 85–565749–1. Courtesy notice is not indispensable to liquidation, nor is it recognized as legal proof of liquidation. 19 C.F.R. § 159.9(c). Courtesy notice is merely intended to inform the importer that liquidation is imminent. As the government explains, liquidations may occasionally be postponed beyond the date specified in a courtesy notice. Thus, such notice does not conclusively establish the date of liquidation; this is especially so where, as here, Customs' records indicate that the requisite bulletin notice was actually posted on a later date. *See Goldhofer Fahrzeugwerk GmbH & Co. v. United States,* 13 CIT 54, 57–58, 706 F. Supp. 892, 895, *aff'd,* 7 Fed. Cir. (T) 148, 885 F.2d 858 (1989). Moreover, the government is accorded a presumption of regularity that attaches to Customs' recordkeeping. *See Kalvar Corp. v. United States,* 543 F.2d 1298, 1301–02 (Ct. Cl. 1976). The ACS files indicate that Peg's protest was filed prior to the recorded liquidation dates of these two entries. Liquidation is legally defined to occur upon the posting of bulletin notice, and Customs is presumed to record liquidation dates in accordance with this definition. Peg's courtesy notices are insufficient to rebut this presumption. Because the protest covering these two entries was filed prior to their recorded liquidation, entry nos. 84–449275–1 and 85–565749–1 must be severed from his action and dismissed for lack of jurisdiction.

The government also argues that protest no. 4909–89–000037 was filed more than ninety days after liquidation of the elastic bandages that

comprised a portion of each of the underlying entries,[4] and is thus untimely under 19 U.S.C. 1514(c) (2). The six entries covered by this protest were initially liquidated between September 23, 1988 and November 14, 1988. Each of these entries included quantities of belts in addition to elastic bandages. On December 30, 1988, five of the six entries were reliquidated to reflect a change in Customs' assessment of belts from Item 389.40 to Item 389.62, TSUS; the sixth entry was reliquidated on January 9, 1989, to reflect the same change. In all cases, the duty assessed upon the imported bandages remained unchanged after reliquidation. Protest no. 4909–89–000037 was filed on March 28, 1989.

Customs may reliquidate entries on its own initiative within ninety days of the initial liquidation. 19 U.S.C. § 1501 (1988); 19 C.F.R. § 173.3(a). Parties to that decision are afforded ninety days from the date of reliquidation to file a protest. 19 U.S.C. § 1514(c)(2). The right to protest a reliquidation, however, is expressly limited. Reliquidation does not open the affected entry to permit the filing of a protest that contests issues that were not specifically addressed in the reliquidation. 19 U.S.C. § 1514(d). Thus, classification decisions that are not considered during reliquidation are measured from the date of original liquidation for purposes of 19 U.S.C. § 1514(c) (2). It is clear from the record that Customs reliquidated the instant entries only with regard to the proper classification of belts; liquidation of the elastic bandages remained unaffected. Because its protest was filed more than ninety days after liquidation of the elastic bandages contained in the underlying entries, the court lacks jurisdiction to entertain Peg's claim contesting Customs' denial of protest no. 4909–89–000037. As a result, entry nos. 85–530618–2; 85–530648–3; 85–530823–2; 85–531235–4; 85–531767–6; and 85–530503–1 must be severed from this action and dismissed for lack of jurisdiction.

B. Regulatory Requirements

Peg moves for an order of summary judgment recognizing that it has satisfied the conditions and requirements of all applicable regulations for entry under Item 806.20, TSUS, and Item 807.00, TSUS, in accordance with Headnote 1, Schedule 8, TSUS. This headnote provides that any article that is described in any provision of Schedule 8 is classifiable under that provision "if the conditions and requirements thereof and of any applicable regulations are met." The documentary requirements for entry under Item 806.20, TSUS, and 807.00, TSUS, are respectively found in 19 C.F.R. §§ 10.8 and 10.24 (1985). Although Customs allowed Peg to enter its initial entries of elastic bandages under Item 806.20, TSUS, all subsequent entries were required to be entered under Item 386.50, TSUS. As a result, submission of Schedule 8 duty-reduction documents would have been futile. Peg nevertheless continued to accumulate the requisite documentation, which it now submits to the court

[4] Protest no. 4909–89–000037 covers entry nos. 85–530618–2; 85–530648–3; 85–530823–2; 85–531235–4; 85–531767–6; and 85–530503–1.

in support of its motion. In its response, the government concedes that Peg has satisfied the requirements of 19 C.F.R. §§ 10.8 and 10.24 for entry under Items 806.20 and 807.00, TSUS. The court agrees; as to this issue, Peg's motion is granted.

C. ITEM 806.20, TSUS, CLASSIFICATION

Customs liquidated the imported bandages under Item 386.50, TSUS.[5] Under this provision a duty is assessed upon the entire value of the imported merchandise. Peg argues first that its elastic bandages are properly classified under Item 806.20, TSUS, as articles exported for repairs or alterations; under this provision the duty rate applicable to the article is assessed only upon the value of the alterations or repairs performed abroad. Peg bases its argument on its insistence that the processing performed in Haiti is properly characterized as a mere "finishing" operation. Accordingly, Peg recognizes that its elastic bandages are dutiable at the rate specified in Item 386.50, but insists that such duty may be assessed only upon the value of the work performed in Haiti. *See* Headnote 2, Part 1, subpart B, Schedule 8, TSUS (1985). The government responds by asserting that the Haiti operations do not meet well-settled criteria for treatment as "repairs or alterations," but are properly considered an essential step in the manufacturing process. Resolution of this dispute depends upon judicial interpretation of the term "alteration" as it is used in the tariff schedules, and upon whether the bandages, as exported from Puerto Rico to Haiti, were suitable for their intended use. Despite Peg's protestations to the contrary, it is evident from the submissions that there are no genuine issues of material fact. As a result, Peg's claim is susceptible of summary disposition. *See, e.g., Lynteg, Inc. v. United States,* 10 Fed. Cir. (T) ____, ____, 976 F.2d 693, 695–96 (1992).

The term "alteration," as it was used in the predecessor to Item 806.20, TSUS, was analyzed by the Court of Customs and Patent Appeals in *United States v. J.D. Richardson Co.,* 36 CCPA 15 (1948).[6] In *Richardson,* metal rims Were exported from Detroit, Michigan to Windsor, Canada, where they were flanged in accordance with specifications provided by the United States Army. The Rims were used exclusively as finished parts in the assembly of idler wheels for the T–26 tank. Unflanged rims could not be employed for this purpose. *See Richardson,* 36 CCPA at 16. Because unflanged rims were unsuitable for their intended use, as described in the Army's specifications, the court concluded that the exported rims were in an "unfinished" condition. The court found that Congress intended to limit the preferential tariff treatment accorded articles exported for alterations; only those articles exported in a "finished" condition were eligible for such treatment. *Id.* at 18. The

[5] This provision covers: Articles not specially provided for, of textile materials, not ornamented, of cotton, other. In 1984 the duty rate for Item 386.50, TSUS, was 10.5% *ad valorem.* In 1985 this rate was reduced to 9.3% *ad valorem.*

[6] Paragraph 1615 of the Tariff Act of 1930 was amended by paragraph 1615(g) of the Customs Administrative Act of June 25, 1938, to provide that duties on articles exported from the United States for alterations or repairs were to be assessed only upon the value of such foreign alterations or repairs. *Richardson,* 36 CCPA at 16–17.

court refused to accord the flanged rims preferential treatment, because flanging was a necessary step in the manufacture of the completed article. *Id.* at 18–19. *Richardson* thus offers three relevant points: (1) exported articles that are not yet suitable for their intended use are unfinished; (2) product specifications provide an excellent indication of a product's intended use; and, (3) foreign processing of unfinished articles exported from the United States is not properly considered an "alteration" within the meaning of the Tariff Act of 1930.

The Court of Customs and Patent Appeals reaffirmed the *Richardson* rationale in the context of Item 806.20, TSUS, in *Dolliff & Co. v. United States,* 66 CCPA 77, 82, 599 F.2d 1015, 1019 (1979). In *Dolliff,* polyester fabrics made in the United States were exported to Canada for further processing and imported back to the United States. The Customs Court had denied Item 806.20 treatment to the imported fabrics. *Dolliff,* 66 CCPA at 79, 599 F.2d at 1017. On appeal, the court held that "repairs and alterations are made to *completed* articles and do not include intermediate processing operations which are performed as a matter of course in the preparation or the manufacture of finished articles." *Id.,* 66 CCPA at 82, 599 F.2d at 1019 (emphasis added). Because the Canadian operations were essential to initial production of the finished fabric, such processing could not qualify as "alterations" within the meaning of Item 806.20. The court therefore affirmed the decision of the Customs Court. *Id.,* 66 CCPA at 83–84, 599 F.2d at 1020–21.

The reasoning employed by the *Richardson* and *Dolliff* courts governs analysis of this issue. In order to decide whether Item 806.20 treatment is appropriate for Peg's bandages, this court must ascertain: (1) the intended use of the bandages; and (2) whether the bandages are suitable for their intended use prior to being exported to Haiti for further processing. The first inquiry must be answered with particular reference to Peg's product specifications. Preferential treatment under Item 806.20 is available only if the second inquiry is answered in the affirmative. *See Guardian Industries Corp. v. United States,* 3 CIT 9, 12–13 (1982).

Peg states that "[t]he elastic bandages in issue are designed and intended to be used for the purpose of providing compressive force to an injured limb or joint of the human body * * * [or] to hold casts or dressings in place during post-surgical care, or to serve as an anti-embolism measure." Pl.'s Br. at 11, 24. Each of these uses depends solely upon the ability of the bandage to bind and compress either the human body itself, or a cast or dressing applied to the human body. Peg's narrow definition is thus satisfied when the bandages are first capable of sustaining the compressive force called for in the product specifications. But Peg's specifications dictate that the bandages' "intended use" must be defined more broadly. Indeed, these specification offer a comprehensive statement of what Peg demanded of its product.[7] Two provisions are worthy

[7] Paragraph 2.1 defines the scope of the specifications: "This specification shall provide *the requirements and any other applicable information necessary* to maintain a proper and controlled product." Memorandum of Law in Support of the Government's Motion for Summary Judgment, Exhibit C (emphasis added).

of note: first, the ends of the bandages were required to be sewed to prevent unraveling; and second, the materials used in fabricating the bandages were required to be capable of withstanding repeated washing and autoclaving cycles without injury or loss of elasticity. Pursuant to this second specification, Peg's performance standards mandated rigorous test procedures including laundering and drying procedures. Finally, Peg's quality control specifications included an inspection for defective sewing. The implication of these requirements is clear: Peg's bandages were intended as multiple-use elastic bandages, capable of sustaining intermittent cycles of washing and drying between periods of use.

Peg admits that an unsewn or unsecured bandage will begin to ravel at the ends because "[r]ubber or spandex has a greater capacity to stretch than cotton yarn." Plaintiff's Answers to Defendant's First Interrogatories and Request for Production of Documents at 28. Peg adds that "[u]nless the bandage is secured at its end, the stretched elastic tends to 'shrink' to its original, 'relaxed' position, leaving only cotton thread at the ends. These yarns in turn are more readily unraveled, and the process is accelerated because the greatest stress on a bandage tends to be at its ends." *Id.* Peg also admits that sewing the ends of its bandages specifically prevents such unraveling. Id. The forces exerted by washing and drying an unsewn bandage can only speed the unraveling process, thus limiting the useful lifetime of the bandage. Clearly, then, the sewing process is essential to transforming what is essentially a single-use or limited-use bandage into a reusable bandage.[8] A reusable elastic bandage is simply not complete until the ends are secured against unraveling. Stated another way, an unsewn elastic bandage is plainly unsuitable for use as a commercially acceptable reusable bandage.[9]

Peg's error lies in its narrow view of the product's intended use, a view that is inconsistent with its own specifications. The fact that the sewing process does not influence the ability of the bandage to apply a compressive force is irrelevant-both sewn and unsewn bandages are capable of applying a compressive force, but only sewn or otherwise secured bandages are capable of repeated washings without diminishing their functional ability. Also irrelevant is the fact that hospital staff sometimes cut elastic bandages to shorten their length-once cut the bandage immediately becomes susceptible to unraveling and thus loses its "reusable" quality. In sum, because the unsewn bandages are unsuitable for their intended use as reusable bandages, the sewing operations performed in Haiti are not alterations within the meaning of Item 806.20, TSUS. Classification of the bandages under 806.20 is therefore denied.

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[8] In addition to bandages with sewn ends, Peg also sold self-adhesive bandages; these bandages had a self-adhesive substance applied to their ends to prevent unraveling and to obviate the need for metal clips. *See* Plaintiff's Answers to Defendant's First Interrogatories and Request for Production of Documents at 26–27. Exhibit C to the government's motion for summary judgment contains an advertisement for the Ace self-adhesive bandage that flaunts its reusable quality, in contrast to single-use sports tape. Peg's marketing strategy thus provides additional support for the court's conclusion.

[9] Neither Peg nor Becton Dickinson know of any customers that purchase elastic bandages produced by Peg that do not have the ends secured against unraveling. Plaintiff's Answers to Defendant's First Interrogatories and Request for Production of Documents at 38. Peg is also unaware of any competitors that sell unsewn or unsecured elastic bandages. *See id.* at 40.

D. Item 807.00, TSUS, Classification

The government also moves for summary judgment denying Peg's claim for Item 807.00 treatment of its bandages. Item 807.00, TSUS, provides that the value of components fabricated within the United States shall be subtracted from the full value of the imported article prior to assessing a duty upon the import. Item 807.00 treatment is predicated upon three specific requirements: (1) the U.S. components must have been exported in a condition ready for assembly without further fabrication; (2) the U.S. components must not have lost their physical identity in such articles by change in form, shape, or otherwise; and (3) the U.S. components must not have been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting. The government urges that summary judgment denying 807.00 treatment is appropriate because the first and third criteria are not met in the present case. Because the court finds there are no genuine issues of material fact, this claim is also susceptible of summary judgment.

1. *Further fabrication:*

The question of what constitutes a "further fabrication" within the meaning of Item 807.00 is made on a case-by-case basis; there is "no one, all-embracing definition." *Zwicker Knitting Mills v. United States,* 82 Cust. Ct. 34, 39, 469 F. Supp. 727, 730 (1979), *aff'd,* 67 CCPA 37, 613 F.2d 295 (1980). *See, e.g., Proctor & Gamble Distributing Co. v. United States,* 11 CIT 450, 452 (1987). Prior caselaw, however, provides some guidance.

In *United States v. Baylis Brothers Co.,* CCPA 9, 451 F.2d 643 (1971), *modified,* 474 F.2d 1026 (1973), dress fronts were exported to be "smocked," and then imported back to the United States. The smocking operation involved sewing thread through pre-stencilled dots on fabric in order to obtain shirrs, *i.e.* gatherings of material. The court held that the process of joining pre-cut and pre-stencilled fabric with thread was an assembly operation; as a result, the court upheld 807 treatment for the merchandise. This holding necessarily implies that not only the pre-cut fabric, but also the thread, were understood to be "fully fabricated" components of the smocked dress fronts.

The Court of Customs and Patent Appeals later addressed *Baylis* in *Zwicker Knitting Mills v. United States,* 67 CCPA 37, 613 F.2d 295 (1980). In *Zwicker,* open-ended glove fingers were exported to Haiti, where the glove fingers were sewn closed by hand. The *Zwicker* court affirmed the Customs Court's denial of 807 treatment for the glove fingers. In so doing, the court stated that the "joinder [in *Zwicker]* is necessary to finish a subcomponent, whereas the [joinder in *Baylis]* involves subcomponents that are already completed." *Zwicker,* 67 CCPA at 41, 613 F.2d at 297. *Zwicker* teaches that only "finished" components or subcomponents are "fully fabricated," and are thus ready for assembly. Foreign operations necessary to finish such components or subcom-

ponents are therefore not "assembly" operations within the meaning of Item 807.

The government argues that because the foreign sewing operation involved in *Zwicker* was necessary to prevent unraveling of the knitted article, the *Zwicker* holding requires this court to find that the sewing performed in Haiti is similarly a finishing operation; this view renders the bandages ineligible for 807 treatment. *Zwicker,* however, does not compel this conclusion. As previously indicated, Peg's product is a reusable elastic bandage comprised of woven elastic fibers and cotton yarns, thread, and packaging materials. In its condition as exported, the unsewn bandage is capable of sustaining a compressive force, albeit for one or a very few number of uses; nevertheless, the unsewn bandage is "finished" as an elastic bandage, just as the pre-cut fabric in *Baylis* was finished as a dress front. When the unsewn bandage is joined with thread, a fully fabricated component under *Baylis,* the result is a *reusable* elastic bandage. Therefore, the sewing performed in Haiti is an assembly operation within the meaning of Item 807, a process of joining two fully fabricated or "finished" components.

The government points out that the first prong of the test for 807 treatment requires that the foreign processing must necessarily or appropriately be deferred until after manufacture of the components, *i.e.* until assembly occurs. *See United States v. Mast Industries, Inc.,* 69 CCPA 47, 50, 668 F.2d 501, 503 (1981) (citing *Mast Industries, Inc. v. United States,* 1 CIT 188, 192–93, 515 F. Supp. 43, 46–47 (1981)); *United States v. Oxford Industries, Inc.,* 69 CCPA 55, 668 F.2d 507 (1981). By restricting the term "assembly" to include only the packaging of the elastic bandages, the government argues that 807 treatment should be withheld because the sewing operation must be performed prior to such assembly. As noted, however, the court deems sewing of the bandage-ends an assembly operation, one that is necessarily deferred until after manufacture of the component unsewn bandage. The government's argument is therefore rejected.

Finally, the government relies upon *L'eggs Products, Inc. v. United States,* 13 CIT 40, 704 F. Supp. 1127 (1989), in support of its motion. In *L'Eggs,* knit tubes used as leg blank portions of pantyhose were exported from the U.S. to Colombia, where the tubes were sewn to create the toe-end closing. Plaintiff argued that the sewing procedure was an assembly operation within the meaning of Item 807, and that the knit tubes were fully fabricated prior to being exported to Colombia. At the time of their exportation the tubes were fully knit. In addition, they were prevented from unraveling by knitting tuck stitches in the last sixteen courses of the tubes; the foreign sewing operation completed the process of closing the tube-ends. The *L'Eggs* court agreed that the knit tubes were fully fabricated and thus merited 807 treatment.

The government here argues that because the unsewn bandages were in no way processed to prevent their unraveling prior to exportation, they cannot be considered "fully fabricated" within the meaning of Item

807. This argument, however, unduly narrows the proper reading of *L'Eggs*. In distinguishing *Zwicker*, the *L'Eggs* court noted that "[t]here was no further *weaving* or *knitting* [of the leg blanks] required prior to assembly, and there was only some trimming of a small amount of fabric from the seam. Unlike *Zwicker*, which required the *construction* of the fingertips, here, *no new portion of the tube was constructed or 'fabricated' by the operation.*" *L'Eggs*, 13 CIT at 46, 704 F. Supp. at 1131 (emphasis added). Similarly, the sewing operation performed in Haiti does not construct a new portion of the elastic bandage-the bandage ends are created when the woven material is cut in Puerto Rico. Furthermore, the bandages are prevented from unraveling and are closed by means of a single procedure that is unrelated to the initial weaving operation. The contrast between the Puerto Rico and Haiti operations is clear-in Haiti the ends are sewn, not woven; using thread, not elastic fibers or cotton yarn; and, the ends are sewn using a different machine than that used to weave the unsewn bandage. In sum, the fact that the unsewn bandage is not secured against unraveling prior to exportation is not dispositive-what is significant is that no further weaving is required to complete the foreign assembly of the bandage. Peg's process of securing bandage ends is simply not a continuing fabrication; rather, the unsewn bandage is "fully fabricated" within the meaning of Item 807.00, TSUS, prior to exportation. The government's argument is therefore rejected.

2. *Assembly or operations incidental to assembly:*

The government argues that should the court conclude that the unsewn bandages were exported in condition ready for assembly, 807 treatment must still be withheld because the third prong of the test is not satisfied. In order to qualify for preferential treatment, subsection 807.00 (c) requires that articles assembled abroad not be advanced in value or improved in condition, except by (1) being assembled; or, (2) operations incidental to assembly. The government focuses exclusively on the latter exception, arguing that the sewing operation performed in Haiti is not "incidental to assembly." Because the court finds that the sewing operation is a part of the assembly operation, it need not address the government's contentions.

The term "assembly" is commonly defined as "'the joining or coming together of solids.'" *Baylis*, 59 CCPA at 11, 451 F.2d at 645. As used in Item 807.00, assembly means the joining or coming together of fully fabricated or "finished" components or subcomponents. *Id.; L'Eggs*, 13 CIT at 49–50, 704 F. Supp. at 1133–34; *Pistorino & Co. v. United States*, 69 Cust. Ct. 93, 98 (1972); *see Oxford Industries*, 69 CCPA at 60, 668 F.2d at 510–11. The court has found that the unsewn bandage was a fully fabricated component of the reusable bandage. The Haiti operation joined this component with another fully fabricated component, *i.e.* sewing thread. The joining of these two finished components amounted to an "assembly" within the meaning of Item 807. Thus, any increase in value or improvement in condition traceable to the sewing performed in

Haiti is excepted under 807.00(c). As a result, Peg's bandages qualify for preferential tariff treatment under Item 807.00, TSUS.

Conclusion

For the foregoing reasons, entry nos. 84–449275–1; 85–565749–1; 85–530618–2; 85–530648–3; 85–530823–2; 85–531235–4; 85–531767–6; and 85–530503–1 are severed from this consolidated action and designated Court No. 87–12–01184–S, which action is hereby dismissed for lack of jurisdiction. As for the remaining entries, the court concludes that Peg's elastic bandages are eligible for the prescribed duty allowance under Item 807.00, TSUS. Judgment is to be entered for plaintiff.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C93/163 12/13/93 Aquilino, J.	E. Gluck Corp.	85–11–01599	715.05, etc. Various rates	688.40, 688.45, 688.43, or 688.42, etc. Various rates	Blefont Sales Cor. *v.* United States 878 F.2d 1413 (1989) or Texas Instruments *v.* United states 673 F.2d 1375 (1982)	New York Quartz analog watches, etc.
C93/164 12/14/93 DiCarlo, J.	A.T. Clayton & Co., Inc.	91–09–00710	4809.20.20 254.56	4809.20.40 Free of duty 254.80 Free of duty	Agreed statement of facts	New York, Baltimore and Charleston "GIROFORM CF" or "GIROFORM CFB" paper exceeding 36 cm (360 mm) in width
C93/165 12/15/93 Aquilino, J.	E. Gluck Corp.	88–06–00413	715.05, etc. Various rates	688.40, 688.45, 688.43, or 688.42, etc. Various rates	Belfont Sales Corp. *v.* United States 878 F.2d 1413 (1989) or Texas Instruments *v.* United States 673 F.2d 1375 (1982)	New York Quartz analog watches, etc.
C93/166 12/17/93 Goldberg, J.	Singer Sewing Company	92–07–00436	8452.10.00, 8452, 8452.10.10 not over $20 each Other 3.7%	8452.21, 8452.21.90, Other 2.5%	Pfaff American Sales Corp. *v.* United States Slip. 93–101 (June 9, 1993) Court No. 91–03–002020	Memphis, TN 14U over-edger sewing machines

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V93/29 12/14/93 DiCarlo, J.	Synergy Sport International, Ltd.	92–12–00807	Transaction value	$110.04, $102.10, $98.35, etc. per dozen style #85208, 85209, etc.	Agreed statement of facts	Oakland, CA, New York Wearing apparel
V93/30 12/15/93 DiCarlo, J.	Jeri-Jo Knitwear, Inc.	91–02–00105	Transaction value	$231,914	Agreed statement of facts	New York Women's wearing apparel

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